

IDT TYK COMPILATION

This compilation covers all TYK question from indirect tax study material so, if you have practiced qns from study material then you can carry this compilation in exam instead of carrying the 4 module of study material. It will be more convenient.

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6. Composite and mixed supplies



Composite Supply

- Consist of two or more supplies
- Naturally bundled
- In conjunction with each other
- One of which is principal supply
- Tax liability shall be rate of principal supply
- **Example:** Charger supplied alongwith mobile phones.



Mixed Supply

- Consist of two or more supply
- Not naturally bundled
- Though can be supplied independently, still supplied together
- Tax liability shall be the rate applicable to the supply that attracts highest rate of tax
- **Example:** A gift pack comprising of chocolates, candies, sweets and balloons.



TEST YOUR KNOWLEDGE

1. *Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.*

You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on services is 18% whereas the rate of GST applicable on supply of goods is 12%.

2. *Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers.*

Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act, 2017.

3. *Shivaji Pvt. Ltd., a registered supplier, supplies the following goods and services for construction of buildings and complexes -*
- *excavators for required period at a per hour rate*
 - *manpower for operation of the excavators at a per day rate*
 - *soil-testing and seismic evaluation at a per sample rate.*

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

For a given month, the receipts (exclusive of GST) of Shivaji Pvt. Ltd. are as follows:

- *Hire charges for excavators - ₹ 18,00,000*
- *Service charges for supply of manpower for operation of the excavator - ₹ 20,000*
- *Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000*

Compute the GST payable by Shivaji Pvt. Ltd. for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12%

Supply of manpower services and soil-testing and seismic evaluation services – 18%

4. *Mr. Kanjilal Adani is an oil exploration & production contractor and is registered under GST in the State of Gujarat. He entered into a Production Sharing Contract (PSC) with Government of Gujarat wherein he gets a license to explore, exploit and sell the petroleum crude and/or natural gas from the Government in Aliabet Oilfield in lieu of royalty and a share in profit petroleum.*

In the month of June, Mr. Kanjilal Adani explored the petroleum reserves at Aliabet Oilfield. He got a portion of the petroleum silt (non-taxable under GST) worth ₹ 3,00,000 as part of compensation. This petroleum silt is part of cost petroleum as per the contract entered with the Government.

Examine the taxability of the petroleum silt received by Mr. Kanjilal Adani under the GST law.

- 5. Angad Private Ltd. is engaged in the business of distribution of construction material. As an incentive, Angad Private Ltd. pays an amount of ₹ 75,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions. Angad Private Ltd. is of the view that GST is not leviable on such incentive paid to the employees. Whether the view taken by Angad Private Ltd. is correct?*
- 6. XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd., Mumbai since past 2 years. Consideration is settled by BA Ltd. assignment-wise. BA Ltd. paid ₹ 37 lakh to XYZ Consultancy on 10th January for XYZ Consultancy agreeing not to provide similar technical services to any other business entity in India or abroad for a period of next 8 years. XYZ Consultancy is of the view that ₹ 37 lakh is not chargeable to tax under GST law.*

You are required to examine whether the view taken by XYZ Consultancy is valid in law. It may be noted that BA Ltd. is not ready to pay any further amount to XYZ Consultancy in addition to the amount already agreed.

- 7. Mokshabhumi Industries has its manufacturing unit in the State of Maharashtra. It stores the finished goods manufactured by it at a depot located in the State of Gujarat. The depot is owned by Punyabhumi Ltd. – a related person of Mokshabhumi Industries. Punyabhumi Ltd. has not charged any consideration from Mokshabhumi Industries for usage of depot for storage purpose. Whether the storage of goods permitted by Punyabhumi Ltd. to Mokshabhumi Industries qualifies as supply under GST?*
- 8. Rob Shareholding Ltd., an approved intermediary, has entered into an agreement wherein certain securities were to be lent to Dhandhan Bank, under Securities Lending Scheme, 1997. Dhandhan Bank shall pay specified lending fee against*

such lending of securities to it. Explain the taxability of transactions involved in the Securities Lending Scheme, 1997.

9. *Krishnadev is a trader based in India. Ramakrishna, brother of Krishnadev, is located in China and is also engaged in business of trading of goods. Krishnadev places an order with Ramakrishna for procurement of certain goods from local market in China. Before the shipment of goods from China to India, Krishnadev sold such goods to Christiano, a trader located in Brazil. The goods were subsequently shipped from China to Brazil. Comment on the taxability of transaction between Krishnadev and Christiano under GST in India.*
10. *Mohandas International entered into a transaction for import of goods from a vendor located in Italy. Due to financial issues, Mohandas International was not in a situation to clear the goods upon payment of import duty. Mohandas International sold the goods to Radhakrishnan Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Mohandas International shall purchase back the goods in future from Radhakrishnan Export House. Discuss the taxability of transaction(s) involved, under the GST law.*
11. *Mr. Happy has a huge residential property located at a prime location in Mumbai, Maharashtra. He has let out the 1st and 2nd floor to Mr. Peace for residential purposes in April. Mr. Peace surrenders his tenancy rights to Mr. Serene for a tenancy premium of ₹ 10,00,000 on 1st June. Mr. Serene has also paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy (unregistered under GST) from June.*

Determine the taxability of the transaction(s) involved in the given case, for the month of June.

12. (a) *Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to Divyaprakash Charitable Trust in the memory of his late father. The Divyaprakash Charitable Trust constructed a room in the school run by it from such donation and wrote "Donated by Rudraksh Kapoor in the memory of his father" on the door of the room so constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.*

- (b) In the above question, if Divyaprakash Charitable Trust had written on the door of the room constructed from the money donated by Rudraksh Kapoor in the school run by it - "Donated by Rudraksh Publishing House, Ghaziabad, U.P.", would the given transaction/activity qualify as supply?
13. Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January:
- Supply of a laptop along with the laptop bag to a customer of Mumbai for ₹55,000 (exclusive of GST).
 - Supply of 10,000 kits (at ₹50 each) amounting to ₹5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.
 - 100 kits are given as free gift to Jaipur customers (all unrelated) on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ₹35. Input tax credit has not been taken on the goods contained in the kit.
 - Event management services provided free of cost to her brother (wholly dependent on her) for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹80,000.
 - 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017⁴⁶.

Assume rates of GST to be as under:-

S. No.	Particulars	Rate of GST
1.	Laptop	18%
2.	Laptop bag	28%

⁴⁶ Notification No. 12/2017 CT(R) dated 28.06.2017 (containing the list of services exempt from GST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

3.	Hair oil	18%
4.	Beauty soap	28%
5.	Hair comb	12%
6.	Event management service	5
7.	Service of renting of chairs and coolers	12%
8.	Transportation service	5%

From the above information, examine each of the above supplies made by Mrs. Kajal for the month of January and determine the rate of GST applicable on the same.

14. Chandragupta Maurya is an artist who makes contemporary paintings. He is registered in the State of Kolkata. Chandragupta Maurya appoints Dhruv Kumar to auction his painting in Maharashtra. Dhruv Kumar arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Dhruv Kumar on the behalf of Chandragupta Maurya but in his own name and the painting is delivered to the successful bidder.

Examine whether Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I of the CGST Act, 2017.



ANSWERS/HINTS

1. Section 2(30) provides that a composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies.

Further, section 8(a) stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, is treated as a supply of such principal supply. Hence, one needs to ascertain what constitutes the principal supply in this supply. As per section 2(90), principal supply is the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

The above circular further clarifies that in the composite supply of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.

Accordingly, in the given case, the supply of printed books by Satyamev Printers is a composite supply wherein the principal supply is supply of printing services. Thus, the rate of GST applicable thereon is the rate applicable on supply of printing services, i.e. 18%.

2. As per section 7(1)(c) read with Schedule I of the CGST Act, 2017, permanent transfer or disposal of business assets is treated as supply even though the same is made without consideration. However, this provision would apply only if input tax credit has been availed on such assets. Therefore, the disposal of computers by Sudama Associates is not a supply as the input tax credit has not been availed on the same.

3. Computation of GST payable by Shivaji Pvt. Ltd.

Particulars	Value of supply (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400

Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
GST liability			2,63,400

Notes:

- Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.
- Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.
- Compensation is received by Mr. Kanjilal Adani in the form of petroleum silt which, as per the contract with the Government of Gujarat, is part of cost petroleum.

As per *Circular No. 32/06/2018 GST dated 12.02.2018*, the **cost petroleum is not a consideration received** by the oil exploration & production contractors for the services provided to Government under a Production Sharing Contract (PSC) and thus not taxable *per se*. The reason for the same is that the contractors carry exploration and **production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Consequently, the cost petroleum received by Mr. Kanjilal Adani is not taxable under GST.
- Yes, Angad Private Ltd.'s view is correct. In terms of section 7(2) read with Schedule III of the CGST Act, 2017, services by an employee to employer in the course of or in relation to his employment shall not be treated as supply

under GST. Further, the amount paid as incentive by Angad Private Ltd. is not in the nature of gift, and thus, is not covered under Schedule I. Infact, in the given case, the incentive is part of the salary and is directly linked to the sales target. Therefore, the services provided in course or in relation to employment by the employees for which incentives are given to them shall not be treated as a "supply".

In the light of above discussion, GST is not leviable on the incentive paid by Angad Private Ltd. to its employees.

6. In the given case, XYZ Consultancy is providing the service of agreeing to the obligation to refrain from an act to BA Ltd. against a consideration of ₹ 37 lakh [Schedule II read with *Circular No. 178/10/2022 GST dated 03.08.2022*]. Therefore, the same is liable to tax under GST law. Thus, view taken by XYZ Consultancy is incorrect.
7. As per section 7(1)(c) read with Schedule I, supply of goods or services or both between related persons without consideration when made in the course or furtherance of business qualifies as supply. Thus, the storage services provided by Punyabhumi Ltd. to Mokshabhumi Industries in course or furtherance of business qualify as supply under GST even though no consideration has been charged for the same.
8. Securities Lending Scheme, 1997 (hereafter referred to as SLS) facilitates the lending and borrowing of securities. Securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

However, SLS doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. The lending fee charged from the borrowers of securities has the character of consideration and is taxable under GST. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately [*Circular No. 119/38/2019 GST dated 11.10.2019*].

9. The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III, transactions involving sale of goods

from a place in non-taxable territory to another place in non-taxable territory, without such goods entering into India, shall be treated neither as supply of goods nor as supply of services under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

- 10.** As per Schedule III, high seas sale transactions i.e. supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be treated neither as supply of goods nor as supply of services under GST. Thus, the sale of goods by Mohandas International to Radhakrishnan Export House in high seas shall not be liable to GST.

Further, the import duty including IGST shall be payable by Radhakrishnan Export House at the time of clearance of goods at port of import. In case the goods are sold back by Radhakrishnan Export House to Mohandas International at a subsequent point of time, the same shall be treated as normal domestic sale transaction and GST shall be applicable on the same subject to other conditions prescribed under GST Law.

- 11.** *Circular No. 44/2018 CT dated 02.05.2018* clarifies that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Hence, in the given case, the tenancy premium of ₹ 10,00,000 received by Mr. Peace for surrendering his tenancy rights to Mr. Serene is liable to GST.

The circular further clarifies that since renting of residential dwelling for use as a residence to an unregistered person is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017⁴⁷], grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both to an unregistered person is exempt. Consequently, monthly rent ₹ 1,00,000 received by Mr. Happy from Mr. Serene is exempt.

12. Circular No. 116/35/2019 GST dated 11.10.2019 has clarified that in case of donations received by a charitable institution, when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Thus, GST is not leviable where all the following three conditions are satisfied namely:

- Gift or donation is made to a charitable organization
 - Payment has the character of gift or donation
 - Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.
- (a) In the backdrop of the above discussion, in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh's act of philanthropy and is not aimed at advertising or promoting his business.

⁴⁷ Notification No. 12/2017 CT (R) dated 28.06.2017 (containing the list of services exempt from CGST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

There is no reference/mention of his publishing house which otherwise would have got advertised.

Thus, the money donated by Rudraksh Kapoor is not a leviable to GST.

- (b) In the given case, since the name of Rudraksh Publishing House has been displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his publishing house which is being advertised. In such a case, it is a supply of service by Divyaprakash Charitable Trust for a consideration received in the form of donation.

13.

S. No.	Particulars	Rate of GST
(i)	Supply of laptop bag along with laptop to Mumbai customer [Being naturally bundled, supply of laptop bag along with the laptop is a composite supply which is treated as the supply of the principal supply [viz. laptop] in terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	18%
(ii)	Supply of kits to Ram Fancy Store [It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate [viz. beauty soap] in terms of section 8(b).]	28%
(iii)	Free gifts to customers [Cannot be considered as supply under section 7 read with Schedule I as the gifts are given to unrelated customers without consideration.]	Nil
(iv)	Event management services provided free of cost to her brother [who is a related person] for his son's	5%

	marriage. Thus, said services shall fall within the purview of Schedule I and shall be treated as supply even if made without consideration. Since it is an individual supply, it will be taxed at the rate applicable on said service.	
(v)	Chairs and coolers hired out to Function Garden [Transportation services provided by Mrs. Kajal are exempt. However, since chairs and coolers are hired out along with their transportation, it is a case of composite supply wherein the principal supply is hiring out of chairs and coolers. Accordingly, transportation service will also be taxed at the rate applicable for renting of chairs and coolers*]	12%

**Note: As per section 2(30), composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies. Since in point (v), service of hiring out of chairs & coolers is taxable while transportation service is exempt, it is possible to take a view that this is not a case of composite supply.*

In that case, the two services will be treated as independent services and taxed accordingly.

14. An activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is considered as supply even if made without consideration provided the invoice for further supply is issued by the agent in his own name [Section 7(1)(c) read with Para 3 of Schedule I of the CGST Act, 2017].

Circular No. 57/31/2018 GST dated 04.09.2018 provides that where the invoice for further supply of goods is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3 of Schedule I

In the given case, Dhruv Kumar is not merely providing auctioneering services to Chandragupta Maurya, but is also supplying the painting on behalf of

Chandragupta Maurya to the successful bidder and has the authority to transfer the title of the painting on behalf of Chandragupta Maurya. Dhruv Kumar issued the invoice in his own name for supply of the painting on the behalf of Chandragupta Maurya. Thus, Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I.

Other points

Bill of supply shall be issued instead of tax invoice.

Tax shall not be not collected from recipient of supply

Input tax credit shall not be availed

Composition Scheme if availed shall include all registered persons having same PAN

Penalty shall be imposed in case of irregular availment of the composition scheme

**TEST YOUR KNOWLEDGE**

1. *Panini Private Limited, Jaipur, agrees to sponsor a sports event organized by Pink City Club in Jaipur. Panini Private Limited has paid an amount of ₹ 5,00,000 for such sponsorship of the sports event. Consequently, said event was named after the brand name of Panini Private Limited. Examine who is the person liable to pay tax in the given case.*
2. *Arpan Singhania is an executive director in Narayan Limited, Haryana. The company paid him the sitting fee amounting to ₹ 25,000, for the month of January. Further, salary was paid to Arpan Singhania amounting to ₹ 1.5 lakh for the month of January on which TDS was also deducted as per applicable provisions under Income-tax law. Tapasya & Associates, in which Arpan Singhania is a partner, supplied certain professional services to Narayan Limited in the month of January for an amount of ₹ 2 lakh. Discuss the person liable to pay GST in each of the supplies involved in the given case.*
3. *Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the firm name M/s. Rajbeer & Sons. He has opted for composition scheme for the financial year 2021-22.*
His turnover for current FY ₹ 80 lakh and is expected to achieve ₹ 130 lakh in financial year 2022-23. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of composition scheme in financial year 2022-23.

His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s Rajbeer & Sons with effect from 1st April of financial year 2022-23 and wants to enjoy the benefits of composition scheme under GST.

Advise Mr. Rajbeer and his son Karan.

4. *Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 1st April of the current financial year. The firm provides architectural services in Madhya Pradesh only. It provided the following details of its turnover during the current financial year:*

<i>April - June</i>	<i>₹ 20 lakh</i>
<i>July - Sept</i>	<i>₹ 30 lakh</i>
<i>Oct - Dec</i>	<i>₹ 20 lakh</i>

The firm has obtained the registration under section 22 with effect from 1st July and opts to pay tax under composition scheme. Determine the tax liability of Varun & Arun Associates for the quarters: April – June, Jul-Sept and Oct-Dec.

Note: The rates of tax on architectural services are CGST- 9% and SGST-9%.

5. *Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of financial year 2022-23.*
- (a) *Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing and supplying computer systems. Its aggregate turnover in the financial year 2021-22 is ₹ 125 lakh. Technology Enterprises supplies the computer systems manufactured by it within the State of Punjab only. With a view to expand its business operations, it will also start providing the repairing services of computer systems in Punjab in the financial year 2022-23.*
- (b) *M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of ₹ 112 lakh in the financial year 2021-22. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi from financial year 2022-23.*

- (c) *Sitaram Associates, registered in Sikkim, is engaged in running a restaurant chain 'Veg Kitchen' in the State. It has a turnover of ₹ 73 lakh in the financial year 2021-22. In the financial year 2022-23, it decides to shut down the food chain owing to huge losses being incurred in the said business. Instead, it will start providing intra-State architect services from financial year 2022-23.*
- (d) *Deepti Services Ltd., registered in Uttarakhand, is exclusively providing intra-State hair styling services. It has turnover of ₹ 34 lakh in the financial year 2021-22.*

Will your answer be different, if Deepti Services Ltd. also start intra-State supply of beauty products alongwith providing hair styling services in the financial year 2022-23?

6. *B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.*

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes):

Particulars	Turnover for the quarter ended 30 th June (₹)	Turnover for the quarter ended 30 th September (₹)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

The extract of the only bill book maintained by the firm showed the following details-

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	1 st October	2,00,000	3,000	2,03,000

2307	1 st October	1,36,000	2,250	1,38,250
2308	2 nd October	67,000	39,250	1,06,250
2309	3 rd October	58,750	33,750	92,500
2310	5 th October	1,00,000	-	1,00,000
2311	6 th October	94,000	6,000	1,00,000
2312	6 th October	-	17,000	17,000
2313	8 th October	50,000	6,000	56,000
2314	9 th October	60,000	9,000	69,000
2315
.....

Further, B & D Company paid freight of ₹ 1,40,000 to Goods Transport Agency during the period April to October. Assume equal amount of freight is paid each month on the 10th day of each month. Also, assume that the goods for which the freight is paid on 10th day of the month are transported between 11th to 20th day of the month.

All the above amounts are exclusive of taxes, wherever applicable.

Compute the GST liability (ignoring ITC provisions) of B & D Company for the period April to October under composition scheme under sub-sections (1) and (2) of section 10 showing calculations for each quarter separately.

Note: Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each wherein GTA has not opted to pay tax itself. Stock is valued at cost price.

- Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the financial year 2021-22, it had a turnover of ₹ 140 lakh from the restaurant service. Further, it had earned the bank interest of ₹ 20 lakh from the fixed deposits in said financial year. You are required to advise Shubhlaxmi Foods whether it is eligible for the composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

Further, assuming that in the financial year 2022-23, its turnover is ₹ 130 lakh from the supply of restaurant services and ₹ 10 lakh from the supply of farm labour in Maharashtra. It has also earned the bank interest of ₹ 30 lakh from the fixed deposits. Compute the tax payable by Shubhlaxmi Foods in the financial year 2022-23.

8. Bansal and Chandiook started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1st April in the current financial year. The firm specializes in providing audit services to banks in Rajasthan. It provided the following details of its turnover:

Quarter	Amount (in ₹)
Apr-Jun	10 lakh
Jul-Sep	20 lakh

It crossed the threshold limit of ₹ 20 lakh on 1st August. Bansal and Chandiook wishes to opt to pay tax at concessional rate under section 10(2A). Examine whether the firm is eligible for this scheme in the current financial year? If yes, then determine the tax payable by it in quarters (i) Apr-Jun & (ii) Jul-Sep?

9. Mr. Prem is running a restaurant in New Delhi. In the financial year 2021-22, it has an aggregate turnover of ₹ 120 lakh from the restaurant services. In the financial year 2022-23, apart from restaurant service, he also wants to provide food delivery services to other small restaurants. He estimated the turnover of such services is upto ₹ 5 lakh.

Mr. Prem wishes to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23. You are required to advise him for same.

10. M/s Heeralal and Sons, registered in Karnataka, has opted to avail the benefit of composition scheme under sub-sections (1) and (2) of section 10 from 1st April, 2022. It has furnished the following details for the quarter ended on 30th June, 2022.

S. No.	Items	₹
(i)	Taxable turnover of goods within the State	15,00,000

(ii)	Exempted turnover of goods (exempted by way of notification) within the State	17,00,000
	Total Turnover	32,00,000

Using the above information, calculate tax to be paid by the firm for quarter ended on 30th June, 2022 in following independent situations:

- (i) M/s Heeralal and Sons is a manufacturer
- (ii) M/s Heeralal and Sons is a trader
11. M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. It is engaged in paying tax under regular scheme under GST law. The concern provides the following information pertaining to supply made/input services availed by it during the month of March:

	Particulars	₹
(i)	Provided Direct Selling Agent service to Y Bank Ltd.	4,00,000
(ii)	Provided security services (by way of supply of security personnel) to ABC P. Ltd., a registered person under GST	60,000
(iii)	Provided security services (by way of supply of security personnel) to PSR Trust, an unregistered person under GST	1,00,000
(iv)	Provided renting of motor vehicle for transportation of passengers to Amaze Tours Ltd. and value of supply included cost of fuel	75,000
(v)	Provided renting of motor vehicle for transportation of passengers to Priti & Co., CA firm and value of supply included cost of fuel	40,000
(vi)	Availed representational service from PB and Co., a law firm towards a Consumer Court case	70,000

Determine the GST liability of M/s All-in-One for the month of March by giving necessary explanations for treatment of various items. Rates of GST for both inward and outward supply is CGST/SGST@ 9% each except renting a vehicle, for which CGST/SGST @ 2.5% each is applicable. M/s All-in-One commenced its business from February. All the supplies are intra-State only. Ignore the provisions relating to input tax credit.

12. *MN Ltd. has two registered places of business in the State of Haryana. Its aggregate turnover during the financial year 2021-22 was ₹ 62 lakh. It wishes to opt for composition levy under sub-sections (1) and (2) of section 10 for one of the place of business in the financial year 2022-23 and wants to continue with registration under regular scheme and pay taxes at the normal rate for the other place of business. Both the places of business are having the same Permanent Account Number issued under the Income-tax Act, 1961. Can MN Ltd. do so? Explain with reason.*
13. *Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of Ranveer Industries in the financial year 2021-22 is ₹ 70 lakh. It has opted for composition levy under sub-sections (1) and (2) of section 10 in the financial year 2022-23 and paid tax for the April – June quarter of financial year 2022-23 under composition levy.*

The proper officer has levied penalty for wrongly availing the scheme on Ranveer Industries in addition to the tax payable by it.

Examine the validity of the action taken by proper officer.

14. *Mr. Yash, doing business in the State of Kerala, commenced his business in the month of April and provides the following further information.*
- (i) *His intra-State turnover for the first two quarters was as follows:*
- April - June - ₹ 20 lakh*
- July - September - ₹ 100 lakh*
- (ii) *In each of the quarters, exempt supply made by him was 25% of the total turnover for the said quarter.*

(iii) *Since the product supplied by him was eligible for composition scheme, he opted for registration under composition scheme with effect from 1st July.*

You are required to compute the tax payable by Mr. Yash under GST law from the above information:

- (i) *If he is a manufacturer*
- (ii) *If he is a trader.*



ANSWERS/HINTS

1. *Notification no 13/2017 CT (R) dated 28.06.2017 as amended (hereinafter referred to as reverse charge notification), provides that sponsorship services provided by any person to a body corporate or partnership firm located in the taxable territory, shall be liable to GST under reverse charge in the hands of recipient.*

In the present case, Pink City Club is the supplier of sponsorship services which is receiving the consideration in the form of sponsorship fee of ₹ 5,00,000 from Panini Private Limited, against the provision of sponsorship service. Since the recipient of sponsorship services- Panini Private Limited is a body corporate, GST on said services is payable by the recipient - Panini Private Limited, under reverse charge.

2. **Sitting fee paid to director** – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge. Hence, in the present case, the sitting fee amounting to ₹ 25,000, payable to Arpan Singhania by Narayan Limited, is liable to GST under reverse charge and thus, recipient of service - Narayan Limited – is liable to pay GST on the same.

Salary paid to director - As per *Circular No.140/10/2020 GST dated 10.06.2020*, the part of director's remuneration which is declared as salary in the books of a company and subjected to TDS under section 192 of the

Income-tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III. Therefore, in the given case, the salary received by Arpan Singhania of ₹ 1.5 lakh is not liable to GST.

Services provided by Tapasya & Associates – Tapasya & Associates have rendered certain professional services to Narayan Limited. The fact that Arpan Singhania is a partner in Tapasya & Associates and a director in Narayan Limited does not have any impact on the taxability of the professional services supplied by Tapasya & Associates to Narayan Limited. The professional services provided by Tapasya & Associates to Narayan Limited are liable to GST under forward charge and thus, supplier - Tapasya & Associates – is liable to pay GST on the same.

3. As per section 10, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT may opt for composition scheme, provided he is, inter alia, engaged in supply of goods and/or restaurant service. However, a person who opts for composition scheme is permitted to supply services other than restaurant service of value not exceeding 10% of turnover in a State/UT in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, M/s. Rajbeer & Sons, engaged in business of selling goods relating to interior decoration, is eligible for composition scheme in the financial year 2022-23 since its aggregate turnover in financial year 2021-22 (viz. ₹ 80 lakh) does not exceed ₹ 1.5 crore.

If Karan wishes to start the business of providing services relating to interior decoration under the same firm name M/s Rajbeer & Sons, the sole proprietorship needs to be first converted into a partnership firm. Further, new GST registration under the new PAN is required to be obtained.

In such a case, the firm can provide services relating to interior decoration up to a value of ₹ 5 lakh (10% of zero turnover of last year or ₹ 5 lakh, whichever is higher) to continue enjoying the benefit of composition scheme in financial year 2022-23.

4. The composition scheme under sub-sections (1) and (2) of section 10 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Varun & Arun Associates is exclusively supplying services other than restaurant services, it

is not eligible to pay tax under sub-sections (1) and (2) of section 10. However, section 10(2A) provides an option to a registered person, who is not eligible to pay tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions.

In the given case, Varun & Arun Associates has started the supply of services in the financial year 2021-22. Therefore, its aggregate turnover in the financial year 2021-22 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2022-23. It becomes eligible for the registration when its aggregate turnover exceeds ₹ 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

For determining its turnover of the State for payment of tax under composition scheme under section 10(2A), turnover of April-June quarter [₹ 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

On next ₹ 30 lakh [turnover of July-Sept quarter], it shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ₹ 90,000 and SGST ₹ 90,000.

By the end of July-Sept quarter, its aggregate turnover reaches ₹ 50 lakh*.

Consequently, its option to avail composition scheme under section 10(2A) shall lapse by the end of July-Sept quarter and thereafter, it is required to pay tax at the normal rate. Thus, the tax payable for Oct-Dec quarter is ₹ 20 lakh × 9%, i.e. CGST - ₹ 1,80,000 and SGST - ₹ 1,80,000.

**Note - While computing aggregate turnover for determining Varun & Arun Associates' eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are also included.*

5. As per section 10(1), the following registered persons, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay tax under composition levy:

- (i) Manufacturers,
- (ii) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- (iii) Any other suppliers eligible for composition levy.

The composition scheme under sub-sections (1) and (2) of section 10 can essentially be availed in respect of goods and only one service namely, restaurant service. However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Further, the registered person should not be engaged in making any inter-State outward supplies of goods or services.

Furthermore, newly inserted section 10(2A) provides an option to a registered person, who is not eligible to pay tax under section 10(1) and 10(2), of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions. One of such conditions is that the registered person should not be engaged in making any inter-State outward supplies of goods or services.

In view of the above-mentioned provisions, the answer to the given independent cases is as under:-

- (a) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 for Jalandhar (Punjab) is ₹ 1.5 crore in the preceding financial year. Thus, Technology Enterprises can opt for said composition scheme in financial year 2022-23 as its aggregate turnover is less than ₹ 1.5 crore in the financial year 2021-22 and it is making intra-State supplies. Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10%

of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Thus, Technology Enterprises can supply repair services up to a value of ₹ 12.5 lakh [10% of ₹125 lakh] in the financial year 2022-23.

(b) In the given case:-

- (i) the turnover in the preceding year is less than the eligible turnover limit under composition scheme under sub-sections (1) and (2) of section 10 for Delhi, i.e. ₹ 1.5 crore.
- (ii) the supplier is engaged in providing restaurant service which is an eligible supply under said composition scheme.
- (iii) the supplier wants to engage in trading of goods which is also an eligible supply under said composition scheme.

Thus, M/s. Siddharth & Sons is eligible for composition scheme under sub-sections (1) and (2) of section 10 from the financial year 2022-23.

(c) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 for Sikkim is ₹ 75 lakh in the preceding financial year. However, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for said composition scheme. Thus, Sitaram Associates cannot opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

The benefit of composition scheme under section 10(2A) is available in case of a registered person who is not eligible to pay tax under sub-sections (1) and (2) of section 10 provided its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh.

Thus, in view of the above-mentioned provisions, Sitaram Associates cannot avail the benefit of composition scheme under section 10(2A) also as its aggregate turnover in the preceding financial year is more than ₹ 50 lakh.

(d) A service provider can opt for the composition scheme under sub-sections (1) and (2) of section 10 only if he is engaged in supply

of restaurant services. Said scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/ or restaurant service.

Since Deepti Services Ltd. is exclusively engaged in supply of services other than restaurant services, it is not eligible for composition scheme sub-sections (1) and (2) of section 10 even though its turnover in the financial year 2021-22 is less than ₹ 75 lakh, the eligible turnover limit for Uttarakhand.

However, since Deepti Services Ltd. is not eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 and its aggregate turnover in the financial year 2021-22 does not exceed ₹ 50 lakh, Deepti Services Ltd. is entitled to avail benefit of composition scheme under section 10(2A) in the financial year 2022-23.

Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products alongwith providing hair styling services in the financial year 2022-23 since it fulfils the conditions laid down for availing the benefit of composition scheme under section 10(2A). It can avail the benefit of composition scheme under section 10(2A) till the time its aggregate turnover in the financial year 2022-23 doesn't exceed ₹ 50 lakh.

6. As per section 10(3) read with *Notification No.14/2019 CT dated 07.03.2019* as amended, the option availed by a registered person to pay tax under composition scheme under sub-sections (1) and (2) of section 10 shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ₹ 1.5 crore [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir].

As per section 2(6), aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1.5 crore

on 3rd October [aggregate of both taxable and exempt turnover from 1st April to 3rd October, i.e. ₹ 1,50,05,000 (₹ 1,44,65,000 + ₹ 2,03,000 + ₹ 1,38,250 + ₹ 1,06,250 + ₹ 92,500)]

The inward supplies of goods transportation services in respect of which the firm has to pay tax under reverse charge have not been included in the aggregate turnover in terms of section 2(6). The tax is payable under reverse charge on such services as the applicable rate of tax on such services is given as 5% and not 12%, in which case the GTA would have been liable to pay tax under forward charge [Notification No. 13/2017 CT (R) dated 28.06.2017 as amended].

Thus, the firm will have to pay tax under regular scheme (Section 9) from 3rd October.

Output tax liability of B & D Company under composition scheme

During the period when the firm pays tax under composition scheme, i.e. from 1st April to 2nd October, tax will be payable on quarterly basis and no ITC will be available [Section 10(4) read with sub-sections (2) and (7) of section 39].

Further, since the firm is trading in goods, tax will be payable @ 1½% [Effective rate - 1% (½% CGST + ½% SGST)] of the turnover of taxable supplies of goods and services (i.e. 'P') in the State [Section 10(1) read with rule 7].

The tax liability for the quarters ended June, September and December under composition scheme will be computed as under-

Particulars	Quarter ended 30 th June (₹)	Quarter ended 30 th September (₹)	Quarter ended 31 st December (₹)
Turnover of 'P' (Taxable supplies)	60,00,000	50,00,000	4,03,000 [2,00,000 + 1,36,000 + 67,000]
CGST @ 0.5% [A1]	30,000	25,000	2,015
SGST @ 0.5% [B1]	30,000	25,000	2,015

Inward supply on which tax is payable under reverse charge [Service of goods transportation availed from a GTA @ 5%]	60,000 [(1,40,000/7) x 3]	60,000 [(1,40,000/7) x 3]	Nil [Paid on 10 th day for goods transported between 11 th to 20 th day of the month, so the same will be assessed under regular scheme]
CGST @ 2.5% [A2]	1,500	1,500	-
SGST @ 2.5% [B2]	1,500	1,500	-
Total CGST [A1 + A2]	31,500	26,500	2,015
Total SGST [B1 + B2]	31,500	26,500	2,015
Total CGST liability for the period from 1st April to 2nd October	60,015 [31,500 + 26,500 + 2015]		
Total SGST liability for the period from 1st April to 2nd October	60,015 [31,500 + 26,500 + 2015]		

7. As per section 10(1) read with *Notification No. 14/2019 CT dated 7.03.2019*, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in a State/Union Territory in the preceding year or ₹ 5 lakh, whichever is higher [Second proviso to section 10(1)].

Although exempt services are included in determining the value of turnover in a State or Union territory, explanation to section 10(1) clarifies that for the purposes of second proviso to section 10(1), the value of exempt supply of

services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Further, the exempt services are also included in the aggregate turnover [Section 2(6)]. However, explanation 1 to section 10 excludes value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount from aggregate turnover.

In this backdrop, in the given case, the aggregate turnover of Shubhlaxmi Foods in the financial year 2021-22 is ₹ 140 lakh (since bank interest of ₹ 20 lakh from the fixed deposits will not be taken into account for computing aggregate turnover). Resultantly, it is eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

Further, apart from restaurant services, it can provide services upto ₹ 14 lakh [i.e. 10% of ₹ 140 lakh or ₹ 5 lakh, whichever is higher], in the financial year 2022-23. As already seen, bank interest of ₹ 20 lakh from fixed deposits will not be considered while determining this limit.

Further, tax payable @ 5% (2½% CGST+ 2½% SGST) of the turnover in the State by Shubhlaxmi Foods in the financial year 2022-23 is as follows:

$$= 5\% \text{ of } ₹ 1,40,00,000 \text{ [} ₹ 1,30,00,000 + ₹ 10,00,000 \text{]}$$

[(Bank interest of ₹ 30 lakh from the fixed deposits is not considered while computing turnover in the State for determining the tax payable under composition scheme (In terms of explanation 2 to section 10)]

$$= ₹ 7,00,000 \text{ [CGST = } ₹ 3,50,000 \text{ and SGST = } ₹ 3,50,000 \text{]}$$

8. The composition scheme under sub-sections (1) and (2) of section 10 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Bansal and Chandiook is supplying services other than restaurant services, it is not eligible to pay tax under sub-sections (1) and (2) of section 10. However, section 10(2A) provides an option to a registered person, who is not eligible to pay

tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions.

In the given case, Bansal and Chandiook has started the supply of services in the financial year 2022-23. Therefore, its aggregate turnover in the financial year 2021-22 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2022-23. It becomes liable to the registration when its aggregate turnover exceeds ₹ 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

Tax payable by the firm is as follows:

(i) Apr-Jun quarter: Tax payable by the firm in first quarter is nil since the firm's turnover [₹ 10 lakh] has not yet exceeded the threshold limit of ₹ 20 lakh (viz. the threshold limit applicable for registration in the State of Rajasthan).

(ii) July-Sep quarter: While computing the tax payable by the firm in second quarter, the turnover from 1st April to the date from which he becomes liable for registration under the Act is to be excluded. Tax payable will be computed as under-

Total Turnover	₹ 30,00,000/-
Less: Threshold limit for registration	₹ 20,00,000/-
Taxable Turnover	₹ 10,00,000/-
Tax @ 6%	₹ 60,000/-*

*CGST = ₹ 30,000 and SGST = ₹ 30,000

9. As per section 10(1) read with *Notification No.14/2019 CT dated 07.03.2019*, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in a State/Union Territory in the preceding year or ₹ 5 lakh, whichever is higher.

In the present case, since the aggregate turnover of Mr. Prem was ₹ 120 lakh in financial year 2021-22 (i.e. it did not exceed ₹ 1.5 crore), he is eligible for composition scheme in the financial year 2022-23. Further, in the financial year 2022-23, he can also supply services other than restaurant services for a value upto ₹ 12 lakh (10% of ₹ 120 lakh) or ₹ 5 lakh, whichever is higher. Thus, till the time his turnover from food delivery services does not exceed ₹ 12 lakh, he is eligible for the scheme.

10. Computation of amount payable under composition scheme

(i) If M/s Heeralal and Sons is a manufacturer:

Tax is to be paid @ 1% ($\frac{1}{2}\%$ CGST+ $\frac{1}{2}\%$ SGST) of the turnover in the State as under:

1% of ₹ 32,00,000 [₹ 15,00,000 + 17,00,000]

= ₹ 32,000 [CGST = ₹ 16,000 and SGST = ₹ 16,000]

(ii) If M/s Heeralal and Sons is a trader:

Tax is to be paid @ 1% ($\frac{1}{2}\%$ CGST + $\frac{1}{2}\%$ SGST) of the turnover of **taxable supplies** of goods and services in the State as under:

= 1% of ₹ 15,00,000

= ₹ 15,000 [CGST = ₹ 7,500 and SGST = ₹ 7,500]

11. GST liability of M/s All-in-One

	Particulars	Value [₹]	CGST payable [₹]	SGST payable [₹]
A.	GST liability on outward supply			
(i)	Direct selling agent service to Y Bank Ltd. [Tax is payable under forward charge since the supplier of such service is a partnership firm and not an individual.]	4,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]
(ii)	Security services to ABC P. Ltd., a registered person [Tax is payable under reverse charge by the recipient since security services are provided by a non-body corporate to a registered person.]	-		
(iii)	Security services to PSR Trust, an unregistered person [Tax is payable under forward charge since security services are provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
(iv)	Renting of motor vehicle to Amaze Tours Ltd. where value included cost of fuel [Tax is payable under reverse charge by recipient since such services are provided by a non-	-		

	body corporate to a body corporate and GST is payable @ 5%.]			
(v)	Renting of motor vehicle to Priti & Co., CA firm, where supply value included cost of fuel [Tax is payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.]	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
Total GST liability on outward supplies			46,000	46,000
B. GST liability on inward supplies under reverse charge				
(vi)	Availed representational service from PB and Co, a law firm [Legal services provided by a partnership firm of advocates/individual advocate other than a senior advocate to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration, are exempt from GST. Since M/s All-in-One started its business in February, its turnover in the preceding financial year is zero making it eligible for exemption from registration in the preceding financial year and hence, the legal services	70,000	-	-

	provided to it are exempt from GST.]			
	GST liability on inward supplies under reverse charge		-	-

- 12.** As per proviso to section 10(2), where more than one registered persons are having the same PAN issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme under section 10(1) unless all such registered persons opt to pay tax under said composition scheme.

In the given case, since MN Ltd. has two places of business (they are not separate entities under the Income-tax Act, 1961), they would be registered under the same PAN. Therefore, MN Ltd. cannot opt for composition levy for only one of the places of business and pay tax under regular scheme for other place of business.

- 13.** As per section 10(1), a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir], may opt for composition scheme.

However, he shall not be eligible to opt for composition scheme if, *inter alia*, he is engaged in making any inter-State outward supplies of goods or services.

In the given case, since Ranveer Industries is engaged in making inter-State supplies of readymade garments, it is not eligible to opt for composition scheme in current year irrespective of its turnover not exceeding the threshold limit of ₹ 75 lakh in the preceding FY.

Further, if the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

- 14.** As per section 10 read with rule 7, a registered person opting for composition levy for goods pays tax at the rates mentioned below during the current FY, in lieu of the tax payable by him under regular scheme:

Manufacturers, other than manufacturers of notified goods	1% (½% CGST+ ½% SGST/UTGST) of the turnover in the State/ Union territory
Trader	1% (½% CGST+ ½% SGST/UTGST) of turnover of taxable supplies of goods & services in the State/ Union territory

Turnover prior to getting registered will not be considered for determining the turnover in a State/Union Territory.

(i) If Mr. Yash is a manufacturer

$$\text{CGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

$$\text{SGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

(ii) If Mr. Yash is a trader

$$\text{CGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500$$

$$\text{SGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500$$

Default provision for the cross-border supply of services other than nine specified services		
S. No.	Description of supply	Place of Supply
1.	Any	<input type="checkbox"/> Location of the recipient of service <input type="checkbox"/> Location of the supplier of service, if location of recipient is not available in the ordinary course of business

(iv) **Place of supply of services notified under section 13(13)**

S. No.	Services notified	Place of supply
1.	Specified research and development services related to pharmaceutical sector supplied by a person located in taxable territory to a person located in the non-taxable territory	Location of recipient of services subject to fulfillment of specified conditions
2.	B2B maintenance, repair or overhaul services of aircrafts, aircraft engines/components/parts	Location of recipient of service
3.	B2B MRO services of ships and other vessels, their engines and other components/ parts	Location of recipient of service



TEST YOUR KNOWLEDGE

1. *XY Ltd. (registered in Rajasthan) received legal services from an attorney in UK (unrelated person) in relation to registration of a trademark in UK. A consideration of £ 8,000 was paid by the company to the attorney in UK.*

Determine the place of supply for the service and suggest if XY Ltd. is required to pay tax under reverse charge on this transaction.

2. *Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.*

Will your answer be different if the product launch party is organised at Dubai?

3. *Priyank Sales of Pune, Maharashtra enters into an agreement to sell goods to Bisht Enterprises of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank Sales, Bisht got an order from Sahil Pvt. Ltd. of Shimoga, Karnataka for the said goods. Bisht Enterprises agreed to supply the said goods to Sahil Pvt. Ltd. and asked Priyank Sales to deliver the goods to Sahil Pvt. Ltd. at Shimoga.*

You are required to determine the place of supply(ies) in the above situation.

4. *Musicera Pvt. Ltd. owned by Nitish Daani - a famous classical singer - wishes to organise a 'Nitish Daani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Nitish Daani Music Concert' are sold.*

You are required to determine the gross GST liability in respect of the supply(ies) involved in the given scenario.

Will your answer be different if the price per ticket is fixed at ₹ 450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

5. *RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.*

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

6. *ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.*

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

The company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of service?

7. *Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru, Karnataka.*
- (i) Determine the place of supply of services provided by Sun Ltd.*
 - (ii) What would be your answer if the product launch takes place in Bangkok?*
 - (iii) What would be your answer if Mr. Murthy is a registered person and product launch takes place in-*
 - (a) Bengaluru*
 - (b) Bangkok?*

8. *Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.*

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Property situated at
I	Delhi	Maharashtra	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions.

9. Asha Enterprises, supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from Deep Traders, located in Jalandhar (Punjab) and registered for the purpose of GST in the said State. The order is for the supply of 100 sewing machines with an instruction to ship the sewing machines to Jyoti Sons, located in Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Traders. Sewing machines are being shipped in a lorry by Asha Enterprises.

Briefly explain the following:

- (a) the place of supply;
 - (b) the nature of supply:- whether inter-State or intra-State and
 - (c) whether CGST/SGST or IGST would be applicable in this case.
10. Determine the place of supply for the following independent cases:
- (i) Grand Gala Events, an event management company at Kolkata, organises two award functions for Narayan Jewellers of Chennai (Registered in Chennai, Tamil Nadu) at New Delhi and at Singapore.
 - (ii) Perfect Planners (Bengaluru, Karnataka) is hired by Dr. Kelvin (unregistered person based in Kochi, Kerala) to plan and organise his son's wedding at Mumbai, Maharashtra.

Will your answer be different if the wedding is to take place in Malaysia?



ANSWERS/HINTS

1. In the given case, the service provider is outside India, and the service recipient is in India. Thus, the place of supply will be determined on the basis of the provisions of section 13. Since the given service does not get covered under any of the specific provisions of section 13, the place of supply thereof will be governed by the default provision, i.e. place of supply of services will be the location of the recipient of service, which in this case is Rajasthan (India).

Further, the given case is import of service in terms of section 2(11) as the supplier of service is located outside India, the recipient of service is located in India and the place of supply of service is in India. Since the services are imported for a consideration from an unrelated person, the same tantamounts to supply in terms of section 7(1)(b) of CGST Act and are liable to GST.

As per reverse charge *Notification No. 10/2017 IT(R) dated 28.06.2017*, if a service is supplied by a person located in a non-taxable territory to a person located in the taxable territory, other than non-taxable online recipient, the tax is payable by the recipient of service under reverse charge.

Therefore, XY Ltd. will pay GST under reverse charge on £ 8000 paid by it to the attorney in UK.

2. Section 12(7)(a)(i) stipulates that when service by way of organization of an event is provided to a registered person, place of supply is the location of such person.

Since, in the given case, the product launch party at Bangalore is organized for Damani Industries (registered in Mumbai), place of supply is the location of Damani Industries, i.e. Mumbai, Maharashtra.

In case the product launch party is organised at Dubai, the answer will remain the same, i.e. the place of supply is the location of recipient (Damani Industries)– Mumbai, Maharashtra.

3. The supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) is a bill to ship to supply where the goods are delivered by the supplier [Priyank Sales] to a recipient [Sahil Pvt. Ltd. (Shimoga)] or any other person on the

direction of a third person [Bisht Enterprises]. The place of supply in case of domestic bill to ship to supply of goods is determined in terms of section 10(1)(b).

As per section 10(1)(b), where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Thus, in the given case, it is deemed that the Bisht Enterprises has received the goods and the place of supply of such goods is the principal place of business of Bisht Enterprises. Accordingly, the place of supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) will be Bareilly, Uttar Pradesh.

This situation involves another supply between Bisht Enterprises (Bareilly) and Sahil Pvt. Ltd. (Shimoga). The place of supply in this case will be determined in terms of section 10(1)(a).

Section 10(1)(a) stipulates that where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Thus, the place of supply in second case is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Sahil Pvt. Ltd.), i.e. Shimoga, Karnataka.

4. In the given situation, three supplies are involved:
- (i) Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.
 - (ii) Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organising the music concert.
 - (iii) Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(6), the place of supply of services provided by way of admission to, *inter alia*, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. (Ludhiana, Punjab) to audiences by way of admission to the music concert is the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply (400 tickets @ ₹ 5,000 per ticket)
= ₹ 20,00,000

IGST @ 18% on value of supply = ₹ 20,00,000 x 18% = ₹ 3,60,000.

- (ii) Section 12(7)(a)(i) stipulates that the place of supply of services provided by way of organization of, *inter alia*, a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organising the music concert is the location of the registered person, i.e. Ludhiana (Punjab).

Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 x 18% = ₹ 1,80,000

- (iii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, *inter alia*, any cultural function shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. (Delhi) by way of accommodation in Hotel lawns for organising the music concert shall be the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable. Therefore, CGST and SGST leviable will be computed as follows:

Consideration for supply = ₹ 4,00,000

CGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

SGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

If the price for the entry ticket is fixed at ₹ 450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above. There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, *inter alia*, musical performance are exempt from IGST vide *Notification No. 9/2017 IT (R) dated 28.06.2017*, if the consideration for right to admission to the event is not more than ₹ 500 per person. However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above.

5. As per section 13(2), in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services, i.e. USA.

As per section 2(6), export of services means the supply of any service when,—

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;

- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

- 6.** Section 2(13) defines “intermediary” to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier, i.e. the location of ABC Pvt. Ltd. which is New Delhi.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,—

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;

- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since, in the given case, place of supply is in India, this transaction does not tantamount to export of service.

7. (i) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Mr. Murthy] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Bengaluru, Karnataka. The location of the supplier and the location of the recipient is irrelevant in this case.

- (ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient, i.e. Pune, Maharashtra.
- (iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in terms of section 12(7)(a)(i).

Therefore, if Mr. Murthy is a registered person, then in both the cases, i.e. either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient, i.e. Pune, Maharashtra.

8. Case I

As per section 12(3), where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient, i.e. Maharashtra.

Case II

As per section 13(4), where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service provider (Mr. Mahendra Goyal) is located in India and service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property, i.e. Paris (France).

9. The supply between Asha Enterprises (Kota, Rajasthan) and Deep Traders (Jalandhar, Punjab) is a bill to ship to supply where the goods are delivered by the supplier [Asha Enterprises] to a recipient [Jyoti Sons (Patiala, Punjab)] on the direction of a third person [Deep Traders].

In case of such supply, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b)]. Thus, the place of supply between Asha Enterprises (Rajasthan) and Deep Traders (Punjab) will be Jalandhar, Punjab.

Since the location of supplier and the place of supply are in two different States, the supply is an inter-State supply in terms of section 7, liable to IGST.

This situation involves another supply between Deep Traders (Jalandhar, Punjab) and Jyoti Sons (Patiala, Punjab). In this case, since the supply involves movement of goods, place of supply will be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, i.e. Patiala, Punjab [Section 10(1)(a)].

Since the location of supplier and the place of supply are in the same State, the supply is an intra-State supply in terms of section 8, liable to CGST and SGST.

10. (i) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in

terms of section 12(7)(a)(i).

Since, in the given case, the award functions at New Delhi and Singapore are organized for Narayan Jewellers (registered in Chennai), place of supply in both the cases is the location of Narayan Jewellers, i.e. Chennai, Tamil Nadu.

- (ii) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Dr. Kelvin] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Mumbai, Maharashtra.

However, if the wedding is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e. Kochi, Kerala.



TEST YOUR KNOWLEDGE

1. *Examine whether the following independent intra-State services are exempt from GST:*
 - (a) *Legal services provided by BMC & Partners, Delhi, a partnership firm of advocates, to Vastukaar Enterprises, Delhi, providing architect services (with preceding financial year's aggregate turnover as ₹21 lakh).*
 - (b) *Minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders.*

2. *Shiva Medical Centre, a Multi-speciality hospital, is a registered supplier in Mumbai. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients (patients who are admitted to the hospital for treatment) without there being any contract with such patients. In return, they are paid the consultancy charges by Shiva Medical Centre.*

However, the money actually charged by Shiva Medical Centre from the in-patients is higher than the consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

The Department took a stand that senior doctors and consultants are providing services to Shiva Medical Centre and not to the patients. Hence, their services are not the health care services and must be subject to GST. Further, GST is applicable on the retention money kept by Shiva Medical Centre.

You are required to examine whether the stand taken by the Department is correct.

3. *Vedanta Hospital, Gurgaon has its own restaurant in the basement of hospital premises - Annapurna Bhawan - which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. Annapurna Bhawan also supplies food to other patients (who are not admitted) or their*

attendants or visitors. The food is prepared by the employees of the hospital and nothing is outsourced to any third-party vendors. Vedanta Hospital is of the view that all services provided by a clinical establishment are exempt from GST and thus, it is not liable to pay any tax. You are required to test the correctness of the view taken by Vedanta Hospital.

4. Indian Institutes of Management (IIM), Indore organizes a placement drive for the students studying in the campus. Many multinational companies register for the placement program and pay the registration fee of ₹ 1,00,000. IIM, Indore is of the view that such consideration received from multinational companies for participating in the placement program is exempt from GST. Explain whether the view taken by IIM, Indore is correct.
5. India Corporations Ltd., a Public Sector Undertaking (PSU), has taken loan from a banking company - Wellness Bank Ltd. The loan was guaranteed by the Central Government. India Corporations Ltd. defaulted in the repayment of such loan. Examine whether the services of guaranteeing of loan by the Central Government, in the given case, is liable to GST.
6. British High Commission, chief diplomatic mission of the United Kingdom, is located in India and is providing advisory services to the students willing to travel to UK for further studies. The mission has organized a seminar for such students and a registration fee of ₹ 5,000 per student has been charged from the students for the same. You are required to determine whether the advisory services provided by British High Commission are liable to GST.
7. Explain in brief whether the below mentioned independent cases of supply of services provided are exempt or taxable under GST law, providing very brief reasoning:
 - (i) Himalayan Wanderers Campsite, a registered entity under GST, has fixed up various tents in Shimla, for lodging purposes being offered to tourists and trekkers. The details of tents rented by Himalayan Wanderers Campsite on 8th December is as under:

No. of tents rented	Amount of rent charged per tent per day	Nature of occupancy
10	₹ 600	Single
15	₹ 1000	Double

- (ii) *Fables Infotech LLP, a limited liability partnership firm having registered place of business in Hyderabad under GST, entered into a contract with Neeta Services for providing air-conditioned mini vans for 1 year for transportation of its female employees working in night shifts to be picked up from designated spots every day at 9.00 p.m. except weekends and dropped to the office. The same female employees were again picked up from office at 6.30 a.m. every morning except weekends and dropped back at the same spots from where they were picked up.*
 - (iii) *HumTum Services Limited, registered under GST, provided catering services to Baljatan Anganwadi, an educational institute providing pre-school education amounting to ₹ 2,50,000 in the month of February.*
 - (iv) *50 women from different cities pursuing diploma in management courses, participated in the 'Leadership Program' designed especially for women for a duration of 9 months by IIM, Bangalore (a certificate as to their participation was awarded to each one of them after the completion of the programme).*
 - (v) *Mr. Ashok rented his residential flat to his friend Dr. Kishore, who is not registered under GST for use as his medical clinic at a monthly rent of ₹ 15000.*
8. *Determine whether GST is payable in respect of each of the following independent services provided by the registered persons:*
- (1) *Fees of ₹ 10,000 charged from office staff for in-house personality development course conducted by Mungerilal College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.*
 - (2) *Bus fees of ₹ 2,500 per month collected from students by Rosemary College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.*
 - (3) *Housekeeping service provided by M/s. Clean Well to Himavarsha Montessori school, a play school, for cleaning its playground and classrooms for ₹ 25,000 per month.*
 - (4) *Info link supplied 'Tracing Alphabets', an online educational journal, to students of UKG class of Sydney Montessori School for ₹ 2,000.*

9. *Sarva Sugam Charitable Trust, a trust registered under section 12AB of the Income – tax Act, 1961, provides the following information relating to supply of its services for the month of August:*

Particulars	Amount (₹)
<i>Renting of residential dwelling for use as a residence to Mr. Soham, an unregistered person</i>	18,00,000
<i>Renting of rooms for devotees (Charges per day ₹750)</i>	6,00,000
<i>Renting of kalyanamandapam (Charges per day ₹15,000)</i>	12,00,000
<i>Renting of community halls and open space (Charges per day ₹ 7,500)</i>	10,75,000
<i>Renting of shops for business (Charges per month ₹9,500)</i>	4,75,000
<i>Renting of shops for business (Charges per month ₹12,000)</i>	7,50,000

Compute the GST liability of Sarva Sugam Charitable Trust for the month of August assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18%.

Note: The rooms/ Kalyanamandapam/ halls/ open space/ shops owned by the trust are located within the precincts of a religious place, meant for general public, owned by the trust.

10. *Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month of September:*

S. No.	Particulars	Amount (₹)
(i)	<i>Amount charged for service provided to recognized sports body as selector of national team</i>	50,000
(ii)	<i>Commission received as an insurance agent from insurance company</i>	65,000

(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts	15,000
(iv)	Service to foreign diplomatic mission located in India	28,000
(v)	Funeral services	30,000

He received the services from an unregistered goods transport agency for his business activities and paid freight of ₹ 45,000.

Note: All the transactions stated above are inter-State transactions and also are exclusive of GST.

You are required to calculate gross GST liability (ignoring ITC provisions) of Mr. Nagarjun for the month of September assuming that the rate of GST, wherever applicable, is 18% except the GTA services where the applicable rate of GST is 5%. Working notes should form part of your answer.

11. Vividh Pvt. Ltd. is a supplier of goods and services at Bangalore, registered in the State of Karnataka, having turnover of ₹ 200 lakh in the last financial year. It has furnished the following information for the month of June.

Particulars	Amount (₹) excluding GST
Services provided by way of a labour contract for repairing a single residential unit otherwise than as a part of residential complex	13,00,000
Fee received from students of a competitive exam training academy run by Vividh Pvt. Ltd.	5,40,000
4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking	6,00,000
Rent paid to Local Municipal Corporation for premises taken on rent for competitive exam training academy	2,50,000
Goods transport services received from a registered GTA which has opted to pay tax itself @ 12%	1,80,000

Compute gross GST liability including tax payable under reverse charge (ignoring ITC provisions) of Vividh Pvt. Ltd. for the month of June assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18% unless otherwise mentioned.

12. "Chanakya Academy" is registered under GST in the State of Uttar Pradesh. The Academy runs the following educational institutions:

- (i) 'Keshav Institute of Technology' (KIT), a private engineering college in Ghaziabad. KIT also runs distance learning post graduate engineering programmes. Exams for such programmes are conducted in select cities at centres appointed by the KIT. All the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)].
- (ii) 'Little Millennium', a pre-school in Lucknow.
- (iii) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- (iv) 'Spring Model' a higher secondary school affiliated to CBSE Board.

The Academy provides the following details relating to the expenses incurred by the various institutions run by it during the period April to September:

S. No.	Particulars	KIT	Little Millennium	Bright Minds	Spring Model
		(₹)	(₹)	(₹)	(₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000

(iii)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(iv)	Rent for exam centers taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	
(v)	Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
(vi)	Hire charges for buses used to transport students and faculty from their residence to the institutions and back	4,80,000	5,50,000	1,30,000	7,50,000
(vii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organised in a	3,20,000	2,60,000	1,80,000	5,00,000

	banquet hall outside the campus)				
(viii)	Security and housekeeping services for the institution(s) (Security and housekeeping services for Spring Model include a sum of ₹ 80,000 payable for security and housekeeping at the student event organised in a banquet hall outside the campus)	6,00,000	4,00,000	3,75,000	4,65,000

With the help of the above details, determine the amount of GST payable, if any, (ignoring ITC provisions) on goods and services received during April to September by the various educational institutions run by the 'Chanakya Academy'; all the amounts given above are exclusive of taxes, wherever applicable.

Note: Rate of GST on goods is 12%, catering service is 5% and on other services is 18%.

13. M/s A2Z, a proprietary firm registered under GST, is engaged in providing various services under one roof. The firm provides the following information pertaining to supplies made/input services availed by it during the month of March:

S. No.	Particulars	Amount (₹)
1.	Amount collected for loading, unloading, packing and warehousing of potato chips	15,000

2.	<i>Fees paid for yoga camp conducted by a charitable trust registered under section 12AB of the Income-tax Act, 1961 for employees of the firm</i>	20,000
3.	<i>Interest received on fixed deposits with APNA Bank by the firm</i>	30,000
4.	<i>Professional services provided to foreign diplomatic mission located in India</i>	50,000
5.	<i>Recovery agent services provided to ABC Finance Ltd. - an NBFC located in Delhi</i>	1,00,000
6.	<i>Security services (by way of supply of security personnel) provided to XYZ Ltd. - a registered person under GST</i>	80,000
7.	<i>Receipts from running an educational institution (a Senior Secondary School) for services provided to its students (including receipts for providing residential dwelling service of ₹ 18,20,000 by the institution to the students)</i>	35,00,000
8.	<i>Supply value including cost of fuel for provision of renting of motor vehicle for transportation of passengers' service to NPS Ltd.</i>	88,000

Determine the GST liability (inclusive of liability for the supplies received also) of M/s A2Z for the month of March with necessary explanation for treatment of each item. Rate of tax for both inward and outward supply is CGST and SGST @ 9% each except for the service of renting a vehicle for transportation of passengers for which CGST and SGST @ 2.5% each is applicable. All the supplies are intra-State only. All amounts given hereunder are exclusive of GST.

14. A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April:

S. No.	Description of services provided
(i)	Transportation of students & staff of 'Shiksha University', a Deemed University
(ii)	Catering services provided to 'Rank CBSE School'
(iii)	Security personnel services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India
(iv)	Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students
(v)	Services, in relation to placement of students, to 'SKILL', a Government recognized vocational training college

Comment on the taxability or otherwise of the above transactions under GST law. State the correct legal provisions for the same.



ANSWERS

1. (a) Services provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017, are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017* (hereinafter referred to as exemption notification).

Since in the given case, services are being provided by the partnership firm of advocates - BMC & Partners to a business entity - Vastukaar Enterprises whose aggregate turnover in the preceding FY exceeded

₹ 20 lakh i.e. the threshold limit for registration applicable to a service provider in Delhi, said services are not exempt from GST.

- (b) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt from GST vide exemption notification.

However, service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and are liable to GST.

In view of the above, minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders are not exempt and are liable to GST.

2. No, the stand taken by the Department is not correct.

Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification.

Health care services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that the entire amount charged by the hospitals from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt from GST. In view of the same, GST is not applicable on the retention money kept by Shiva Medical Centre.

The circular also clarifies that services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not,

are also healthcare services exempt from GST. Hence, services provided by the senior doctors and consultants hired by Shiva Medical Centre, being healthcare services, are also exempt from GST.

3. Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification. *Circular No. 32/06/2018 GST dated 12.02.2018* has clarified that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

In view of the same, GST is not applicable on the food supplied by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

4. Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Resultantly, all the IIMs fall under purview of “educational institutions” as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

Further, the services provided by an educational institution to its students⁷¹, faculty and staff are exempt from GST vide exemption notification.

However, in the given case, services have been provided by the educational institution (viz. IIM, Indore), to the multinational companies. Therefore, the same is not exempt from GST.

5. Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of

⁷¹ As per *Circular No. 82/01/2019 GST dated 01.01.2019*, services provided by IIMs to their students who are enrolled for long duration programs (1 year or more) for which they are awarded diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017, under such long duration programs are exempt from GST.

guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt from GST vide exemption notification.

In the present case, Central Government has guaranteed the loan taken by India Corporations Ltd. [a PSU], from Wellness Bank Ltd., [a banking company]. Consequently, services provided by the Central Government, in the form of guarantee of loan, are exempt from tax.

6. Services by a foreign diplomatic mission located in India are exempt from GST vide exemption notification. Hence, in the given case, advisory services by British High Commission located in Delhi to the students are exempt from GST.
7.
 - (i) **Taxable:** Since there is no specific exemption with respect to services provided by a campsite for lodging purposes, services provided by Himalayan Wanderers Campsite are liable to GST.
 - (ii) **Taxable:** Service of transport of passengers provided by Neeta Services are liable to GST since such services are being provided in a contract carriage which is air-conditioned.
 - (iii) **Exempt:** Since catering services provided to an educational institution providing pre-school education are exempt from GST, HumTum Services Limited is not liable to pay GST.
 - (iv) **Taxable:** Since short duration programs provided by IIMs are not any qualification recognized by law, GST is payable in the given case.
 - (v) **Taxable:** Since residential dwelling is rented for use other than residence, GST is payable on the same.
8. (1) Services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification. Educational Institution has been defined to mean, *inter alia*, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Since Mungerilal College provides education as part of a curriculum for obtaining a qualification recognised by Indian law, the services

provided by it to its staff by way of conducting personality development course would be exempt from GST, it being an educational institution.

- (2) Since Rosemary College provides education as a part of a curriculum for obtaining a qualification recognised by Indian law, the transport services provided by Rosemary College to its students are exempt from GST.
- (3) Services provided to an educational institution, by way of, *inter alia*, house-keeping services performed are exempt from GST vide exemption notification provided such services are performed in such educational institution. However, such exemption is available only when the said services are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

In view of the above discussion, house-keeping services provided to Himavarsha Montessori Play School are exempt from GST since housekeeping services have been performed in such play school itself.

- (4) Services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST vide exemption notification. However, such exemption is not available to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School is not exempt from GST.

9. Renting of precincts of a religious place meant for general public, owned/managed by, *inter alia*, an entity registered as a charitable trust under section 12AA/12AB of the Income-tax Act are exempt from GST vide exemption notification. However, said exemption is not available if:
 - (i) charges for rented rooms are ₹ 1,000 per day or more;
 - (ii) charges for rented community halls, Kalyan mandapam, open area are ₹ 10,000 per day or more;
 - (iii) charges for rented shops are ₹ 10,000 per month or more.

Further, services by way of renting of residential dwelling for use as residence to an unregistered person are also exempt vide exemption notification.

Computation of GST liability of Sarva Sugam Charitable Trust for August

Particulars	Value (₹)	GST @ 18% (₹)
Renting of residential dwelling for use as residence to an unregistered person [Exempt vide exemption notification]	18,00,000	Nil
Renting of rooms for devotees [Exempt since charges per day are below ₹1,000]	6,00,000	Nil
Renting of Kalyanamandapam [Taxable since charges per day exceed ₹10,000]	12,00,000	2,16,000
Renting of community halls and open spaces [Exempt since charges per day are below ₹ 10,000]	10,75,000	Nil
Renting of shops for business [Exempt since charges per month are below ₹10,000]	4,75,000	Nil
Renting of shops for business [Taxable since charges per month exceed ₹ 10,000]	7,50,000	<u>1,35,000</u>
Total		3,51,000

10. Computation of gross GST liability of Mr. Nagarjun

Particulars	Value (₹)	IGST (₹)
<i>Supplies on which Mr. Nagarjun is liable to pay GST under forward charge</i>		
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000	9,000

Commission received as an insurance agent from insurance company [Note 2]	Nil	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000	2,700
Services provided to foreign diplomatic mission located in India [Note 4]	28,000	5,040
Funeral services [Note 5]	Nil	Nil
<i>Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge</i>		
Services received from GTA [Note 6]	45,000	<u>2,250</u>
IGST payable (Since all the transactions are inter-State transactions, IGST is payable on the same.)		18,990

Notes:

- (1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide exemption notification. Thus, service provided as selector of team is liable to GST.
- (2) Commission for providing insurance agent's services is liable to GST. However, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017*⁷². Thus, Mr. Nagarjun will not be liable to pay GST on such commission.
- (3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST

⁷² Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

vide exemption notification. Thus, such services provided in respect of urban area branch will be taxable.

- (4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide exemption notification, services provided to such mission are taxable.
- (5) Funeral services being covered in Schedule III of CGST Act are not a supply and thus, are outside the ambit of GST.
- (6) GST on services provided by a GTA to, *inter alia*, a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017* except where GTA is registered and has exercised the option to itself pay tax on said services⁷³. Since in the given case, GTA is unregistered, it could not have exercised the option to pay tax and thus, GST is payable @ 5% under reverse charge mechanism by the recipient – Mr. Nagarjun.

11. Computation of gross GST liability of Vividh Pvt. Ltd.

Particulars	Value of supply (₹)	GST @ 18% (₹)
Services provided by way of labour contracts for repairing a single residential unit otherwise than as a part of residential complex [Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex are exempt vide exemption notification. Labour contracts for repairing, are thus, taxable.]	13,00,000	2,34,000
Fee received from students of competitive exam training academy	5,40,000	97,200

⁷³ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

[Fee received from students of competitive exam training academy is taxable as it is not an educational institution since competitive exam training does not lead to grant of a recognized qualification.]		
Buses each with seating capacity of 72 passengers given on hire to State Transport Undertaking [Services by way of giving on hire to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers, are exempt from GST vide exemption notification.]	6,00,000	Nil
<i>Services on which tax is payable under reverse charge:</i>		
Rent paid to Local Municipal Corporation [GST is payable under reverse charge in case of renting of immovable property services supplied by a local authority to a registered person.]	2,50,000	45,000
GTA services availed [Since GTA has opted to pay tax @ 12%, tax is payable under forward charge by GTA only and not by Vividh Pvt. Ltd.]	1,80,000	Nil
Gross GST payable		3,76,200

12. Exemption notification exempts select services provided to an educational institution. Here, the “**educational institution**” means an institution providing services by way of-
- (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

The select services which are exempt when provided to an educational institution are-

- (i) transportation of students, faculty and staff;
- (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
- (iii) security or cleaning or house-keeping services performed in such educational institution;
- (iv) services relating to admission to, or conduct of examination by, such institution;
- (v) supply of online educational journals or periodicals.

However, the services mentioned in points (i), (ii) and (iii) are exempt only when the same are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Also, the supply of online educational journals or periodicals is not exempt from GST when provided to-

- (i) pre-school education and education up to higher secondary school or equivalent; or
- (ii) education as a part of an approved vocational education course.

Further, services by way of giving on hire motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent is exempt⁷⁴.

In the given case, all the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Therefore, since KIT imparts education as a part of a curriculum for obtaining a qualification

⁷⁴ as per Entry 22 of Notification No. 12/2017 CT (R)

recognised by the Indian law, the same is an educational institution in terms of the exemption notification.

Similarly, Little Millennium and Spring Model, being a pre-school and a higher secondary school respectively are also educational institutions in terms of the exemption notification.

However, Bright Minds, being a coaching centre, training candidates to secure a banking job, is not an educational institution in terms of the exemption notification. Hence, none of the select services (mentioned above) will be exempt when provided to Bright Minds.

In the light of the foregoing provisions, the amount of GST payable on goods and services received by these educational institutions during April to September is computed as under:

Particulars	KIT	Little Millennium	Bright Minds	Spring Model
	(₹)	(₹)	(₹)	(₹)
Printing services for printing the question papers (paper and content are provided by the Institutions)	Exempt [Services provided to educational institution in relation to conduct of examination]		27,000 [1,50,000 x 18%]	Exempt
Paper procured for printing the question papers [Supply of select services to educational institutions is exempt and not supply of goods to such educational institutions]	51,600 [4,30,000 x 12%]		30,960 [2,58,000 x 12%]	41,280 [3,44,000 x 12%]

Honorarium to paper setters and examiners (not on the rolls of the educational institution)	Exempt [Services provided to educational institution in relation to conduct of examination]			
Rent for exam centres taken on rent like schools etc., for conducting examination	Exempt [Services provided to educational institution in relation to conduct of examination]		18,000 [1,00,000 x 18%]	
Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	Exempt	14,400 [80,000 x 18%]	39,600 [2,20,000 x 18%]	43,200 [2,40,000 x 18%]
Hire charges for buses used to transport students and faculty from their residence to the institutions and back	86,400 [4,80,000 x 18%]	Exempt	23,400 [1,30,000 x 18%]	Exempt
Catering services for running a canteen in	16,000	Exempt	9,000	Exempt

the campus for students [Catering service provided to pre-school and the higher secondary school is exempt irrespective of whether the same is provided within or outside the premises of the pre-school and the higher secondary school]	[3,20,000 x 5%]		[1,80,000 x 5%]	
Security and housekeeping services for the institution(s) [Security and housekeeping service provided to pre-school and the higher secondary school for the student event organised in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]

Total GST payable on goods and services received	2,62,000	14,400	2,15,460	98,880
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13. Computation of GST liability of M/s A2Z for the month of March:

S. No.	Particulars	CGST (₹)	SGST (₹)
1.	Loading, unloading, packing and warehousing of potato chips [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, potato chips is not an agricultural produce.]	1,350 [15,000 × 9%]	1,350 [15,000 × 9%]
2.	Fees paid for yoga camp [Services provided by a charitable trust registered under section 12AB of the Income-tax Act by way of advancement of yoga are exempt.]	--	--
3.	Interest received on fixed deposits [Services of extending fixed deposits in so far as the consideration is represented by way of interest are exempt.]	--	--
4.	Professional services provided to foreign diplomatic mission located in India [Not specifically exempt.]	4,500 [50,000 × 9%]	4,500 [50,000 × 9%]
5.	Recovery agent services provided to ABC Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable]	--	--

	by recipient - ABC Finance Ltd. - under reverse charge (RCM). ^{75]}		
6.	Security services provided to XYZ Ltd., a registered person [Since such services are being provided by a non-body corporate to a registered person, tax on the same is payable by recipient - XYZ Ltd. - under reverse charge (RCM) ⁷⁶ .]	--	--
7.	Receipts from running an educational institution (including receipts for residential dwelling service) [Services provided by an educational institution and services by way of renting of residential dwelling for use as residence are exempt.]	--	--
8.	Renting of motor vehicle service [Since services of renting of motor vehicle including cost of fuel with tax payable @ 2.5% CGST/SGST is being provided by a non-body corporate to a body corporate, tax on the same is payable by recipient – NPS Ltd. – under RCM ⁷⁷ .]	--	--
	Total GST liability	5,850	5,850

⁷⁵ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST.

⁷⁶ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

⁷⁷ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

14.

S. No.	Particulars	Taxability
(i)	Transportation of students and staff of deemed university [Taxable since transportation services provided to an educational institution are exempt only if such institution provides pre-school education or education up to higher secondary school or equivalent.]	Taxable
(ii)	Catering services provided to "Rank CBSE School" [Catering services provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt.]	Exempt
(iii)	Security services to "Win CBSE School" for its annual sports day held at SAI Sports complex [Security services provided to an educational institution providing pre-school education or education up to higher secondary school are exempt provided such services are performed in the premises of such institution. However, in this case, security services are being provided outside the school campus, and hence the same are taxable.]	Taxable
(iv)	Supply of online periodical science journal to school for its higher secondary students [Taxable since educational institutions providing service by way of pre-school education and education upto higher secondary school or equivalent are not eligible for exemption in respect of supply of online educational journals.]	Taxable
(v)	Services in relation to placement of students, to Government recognized vocational training college [Taxable since only services related to admission and conducting exams are exempt for vocational educational institutions.]	Taxable



TEST YOUR KNOWLEDGE

1. *Kanchenjunga Pvt. Ltd. supplies taxable goods to Sutlej Pvt. Ltd. for ₹ 2,50,000 on 23rd June and issues the invoice on 25th June. Payment for the goods is made by Sutlej Pvt. Ltd. on 15th July.*

Determine the time of supply of goods for the purpose of payment of tax.

2. *I buy a set of modular furniture from a retail store. Invoice is issued to me and I make the payment. The furniture is to be delivered to me later in the week when a technician is available to assemble and install it. The next day the rate of tax applicable to modular furniture is revised upward, and the store sends me a supplementary invoice with the delivery note accompanying the furniture to collect the differential amount of tax.*

Is this correct on store's part? Explain.

3. *An online portal, Best Info, raises invoice for database access on 21st February on Roy & Bansal Ltd. The payment is made by Roy & Bansal Ltd. by a demand draft sent on 25th February, which is received and entered in the accounts of Best Info on 28th February. Best Info encashes the demand draft and thereafter, gives access to the database to Roy & Bansal Ltd from 3rd March. In the meanwhile, the rate of tax is changed from 1st March.*

Determine the time of supply of the service of database access by Best Info.

4. *Trust Industries Ltd. has entered into a contract with VST Ltd. to supply gas by a pipeline to VST Ltd. for a period of one year. As per the terms of the contract-*
 - (i) *VST Ltd. shall make monthly payments [Payment for a month shall be made by 7th day of the next month]*
 - (ii) *Every quarter, Trust Industries Ltd. shall issue a statement of account showing the quantity and value of goods dispatched, payments received and payment due.*
 - (iii) *The differential amount, if any, as mentioned in the statement of account shall be paid by VST Ltd.*

The details of the various events are:

August 5, September 5, October 6	Payments of ₹ 2 lakh made in each month for the quarter July-September
October 3	Statement of accounts for the quarter July – September issued by the supplier showing amount of ₹ 2,56,000 as unpaid
October 17	Balance payment of ₹ 56,000 received by supplier for the quarter July – September

Determine the time of supply of goods for the purpose of payment of tax.

5. Renudhoot Ltd. enters into a contract with XYZ Ltd. on 2nd July 2022 for a period of 2 years for construction of a new building - to be used for commercial purposes - for a total consideration of ₹ 150 lakh. As per the terms of contract, Renduhoot Ltd. is required to make payment at different stages of completion of the building namely, 50%, 75% and 100%.

Determine the time of supply using relevant details given as under:

Stage	Date of various stages	Date of issuance of invoice	Date of payment	Amount paid (₹)
Initial booking	02.07.2022	02.07.2022	02.07.2022	15 lakh
50% completion of building	15.03.2023	22.03.2023	29.03.2023	60 lakh
75% completion of building	20.06.2023	24.07.2023	23.07.2023	35 lakh
100% completion of building	30.09.2023	30.09.2023	20.09.2023	40 lakh

6. Mint Industries Ltd., a registered supplier, imports business support services from Green Inc. of USA on 13th August. The relevant invoice for \$ 1,20,000 is raised by Green Inc on 18th August. Mint Industries Ltd. makes the payment against the said invoice as follows:

Case I	22 nd September
Case II	27 th December

Determine time of supply in each of the aforesaid cases.

7. Kothari Ltd., Mumbai, holds 51% of shares of Wilson Inc., a USA based company. Wilson Inc. provides business auxiliary services to Kothari Ltd. From the following details, determine the time of supply of service provided by Wilson Inc:

Agreed consideration	US \$1,00,000
Date on which services are provided by Wilson Inc.	16 th June
Date on which invoice is issued by Wilson Inc.	19 th August
Date of debit in the books of account of Kothari Ltd.	30 th September
Date on which payment is made by Kothari Ltd.	23 rd December

8. Basis the following information, determine the time of supply:

S. No.	Event	Date
(1)	Commencement of provision of service	05 th June
(2)	Completion of service	10 th October
(3)	Invoice issued	20 th October
(4)	Payment received by cheque and entered in the books	15 th October
(5)	Amount credited in Bank account	18 th October
(6)	Rate changed from 12% to 18%	16 th October

Note: Assume that all the days covered in the above case are working days.

9. KLM Ltd., a publishing and printing house registered in Maharashtra, is engaged in supply of books, letter cards, envelopes, guides and reference materials. The following information is provided by the company:

Event	Printing of books	Printing of envelopes
Date of entering into printing contract	16 th March	20 th March
Date of receipt of advance	20 th March	25 th March
Date of completion of printing	10 th April	5 th April
Date of issue of invoice	15 th May	10 th April
Date of removal of books and letter heads to buyer	13 th May	7 th April
Date of receipt of balance payment	31 st May	30 th April

In respect of printing of books, content was supplied by the author. For printing of envelopes, the design and logo were supplied by the buyer.

Determine the time of suppl(ies) for the purpose of payment of tax.

10. Andes Pvt. Ltd., a registered supplier, manufactures product 'A' and 'B'. While 'A' is taxable under forward charge, 'B' is taxable under reverse charge. The following details are provided in relation to two individual supplies of products 'A' and 'B' made by the company:

S. No.	Date	Event
(i)	10 th February	Payment of ₹ 1,00,000 made by buyer for supply of 'A' to be delivered in the month of March
(ii)	13 th February	Receipt of ₹ 1,00,000 [as mentioned in point (i) above]
(iii)	17 th February	Payment of ₹ 2,00,000 made by buyer for supply of 'B' to be delivered in the month of March
(iv)	20 th February	Receipt of ₹ 2,00,000 [as mentioned in point (iii) above]

(v)	5 th March	Product 'A' manufactured and removed
(vi)	6 th March	Receipt of product 'A' [as mentioned in point (v) above] by the buyer
(vii)	10 th March	Product 'B' manufactured and removed
(viii)	23 rd March	Receipt of product 'B' [as mentioned in point (vii) above] by the buyer
(ix)	4 th March	Invoice for ₹ 2,00,000 issued for supply of 'A'
(x)	11 th March	Invoice for ₹ 4,00,000 issued for supply of 'B'
(xi)	25 th March	Payment made by the buyer of 'A'
(xii)	31 st March	Payment [as mentioned in point (xi) above] received
(xiii)	1 st April	Payment made by the buyer of 'B'
(xiv)	4 th April	Payment [as mentioned in point (xiii) above] received

Determine the time of suppl(ies) of goods for the purpose of payment of tax.



ANSWERS/HINTS

- In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, time of supply of goods is 23rd June

being the last date on which invoice ought to have been issued and not 25th June when the invoice is actually issued.

2. No, the store is not correct in issuing supplementary invoice with revised rate of tax. The revised rate of tax is not applicable to the transaction, as the issuance of invoice as well as receipt of payment occurred before the supply. Therefore, in terms of section 14(b)(ii), the time of supply is earlier of the two events namely, issuance of invoice or receipt of payment, both of which are before the change in rate of tax, and thus, the old rate of tax remains applicable.
3. As issuance of invoice and receipt of payment (entry of the payment in Best Info's accounts) occurred before the change in rate of tax, the time of supply of service by the online portal is earlier of the date of issuance of invoice (21st February) or date of receipt of payment (28th February) i.e., 21st February. This would be so even though the service commences after the change in rate of tax [Section 14(b)(ii)].
4. As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31. As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received.

Therefore, invoices should be issued for ₹ 2 lakh each on or before August 5, and September 5, when monthly payments of ₹ 2 lakh are received. Further, invoice should also be issued for differential payment of ₹ 2,56,000 on or before October 3, when statement of account is issued

Thus, assuming that the invoice is issued on August 5, September 5 and October 3, the time of supply for the purpose of payment of tax will be August 5 and September 5 respectively for goods valued at ₹ 2 lakh each and October 3 for the goods valued at ₹ 2,56,000.

5. As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31

Since in the present case, the construction services are provided under a contract for a period exceeding three months with periodic payment obligations, such services would fall within the ambit of term "continuous supply of services" as defined under section 2(33).

As per section 31(5), in case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment, if the due date of payment is not known (iii) on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].

Accordingly, the time of supply with respect to each of the stages of completion is as follows:

Stages of completion	Time of supply
Initial booking	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice or date of receipt of payment is the time of supply. However, date of issuance of invoice (02.07.2022) and date of receipt of payment (02.07.2022) are the same. Therefore, time of supply is 02.07.2022.
50%	Since invoice has not been issued on or before the date of 50% completion, earlier of date of provision of service (15.03.2023) or date of receipt of payment (29.03.2023), i.e. 15.03.2023 is the time of supply.
75%	Since invoice has not been issued on or before the date of 75% completion, earlier of date of provision of service

	(20.06.2023) or date of receipt of payment (23.07.2023), i.e. 20.06.2023 is the time of supply.
100%	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice (30.09.2023) or date of receipt of payment (20.09.2023), i.e. 20.09.2023 is the time of supply.

6. In case of services supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient, tax is payable under reverse charge by the person located in the taxable territory [Notification No. 10/2017 IT (R) dated 28.06.2017]. Hence, in the given case, since the business support services are provided by Green Inc (located in non-taxable territory) to Mint Ltd. (person other than non-taxable online recipient and located in taxable territory), tax is payable under reverse charge by Mint Ltd.

The time of supply of services taxable under reverse charge is the earlier of the following:

- Date of payment, or
- Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

In view of the aforesaid provisions, the time of supply in each of the given cases will be as under:

CASE	Time of supply
CASE I	Since Mint Ltd makes the payment within 60 days of the date of issue of invoice, the time of supply is the date of payment, i.e. 22 nd September.
CASE II	As Mint Ltd. makes the payment after 60 days from the date of invoice, time of supply is the date immediately following the said period of 60 days, i.e. 61 st day which is 18 th October.

7. Since Kothari Ltd. holds 51% shares of Wilson Inc., Kothari Ltd. and Wilson Inc. are 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per second proviso to section 13(3), in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply is the earlier of the following two dates:

Date of entry in the books of account of the recipient of supply [which is Kothari Ltd. in the present case]	30 th September
OR	OR
Date of payment [by Kothari Ltd. in the present case]	23 rd December

Thus, time of supply is 30th September.

8. The explanation to section 14 lays down that the date of receipt of payment is the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. However, the date of receipt of payment is the date of credit in the bank account if such credit in the bank account is after 4 working days from the date of change in the rate of tax.

In the given case, the payment has been credited in the bank account within 4 working days from the date of change in the rate of tax. Therefore, the date of receipt of payment is 15th October being the date of entry in the books of account of the supplier which is earlier than the date of credit of the payment in the bank account (18th October).

As per section 14(a)(iii), in case of change in rate of tax, if the service is supplied before the change in rate of tax and the invoice is issued after the change in rate of tax but the payment is received before such change in rate of tax, the time of supply is the date of receipt of payment.

Therefore, applying the provisions of section 14(a)(iii) to the given case, the time of supply is 15th October.

9. As per *Circular No. 11/11/2017 GST dated 20.10.2017*, in case of printing of books where only content is supplied by the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute **supply of service**.

In case of supply of printed envelopes by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore, such supplies would constitute **supply of goods**.

Accordingly, the time of supply of books and envelopes will be governed by sections 12 and 13 respectively.

In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, in the given case, the last date by which invoice ought to have been issued is 7th April. Thus, the time of supply of envelopes for the purpose of payment of tax is 7th April.

As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;

- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31.

Since in the given case, invoice for the services is not issued within 30 days, the time of supply for the advance received is the date of receipt of payment, i.e. 20th March being earlier than the date of provision of service. However, the time of supply for the balance payment is the date of provision of service, i.e. 10th April being earlier than the date of receipt of balance payment.

- 10.** In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Also, it is important to note that the relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment) [Section 12(3)].

Therefore, time of supply of product 'A', which is taxable under forward charge, is 4th March being the date of issue of invoice. However, time of supply of product 'B', which is taxable under reverse charge, is 17th February to the extent of ₹ 2,00,000 paid as advance being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (17th February) and date immediately following 30 days of issuance of invoice (11th April). For balance ₹ 2,00,000, the time of supply of product 'B' is 23rd March being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (1st April) and date immediately following 30 days of issuance of invoice (11th April).



TEST YOUR KNOWLEDGE

1. *Income tax collected at source should be included in value of the supply in terms of section 15(2)(a). Examine the correctness of the statement.*
2. *How should the supply made by a component manufacturer be valued, when he uses moulds and dies owned by the original equipment manufacturer sent free of cost to him? Explain.*
3. *Examine whether the following discounts ought to be excluded to determine the value of supply:*
 - (i) *Company offering 20% discount for single purchase above ₹ 10,000*
 - (ii) *Company offering additional discount of 1% on purchase of 10,000 pieces in a year*
 - (iii) *After selling a product, the company re-valued the product at a lower value and issued credit note to the buyer for the differential amount.*
4. *Rajesh & Co., a partnership firm, provides financial and management consultancy to a group of companies for an annual retainership fee of ₹ 15 lakh. Further, the firm is provided with a car (along with a driver) for its exclusive use throughout the year. The fuel cost is also borne by the Group. Rajesh & Co. pays GST on the amount of ₹ 15 lakh.*

Is the value for the service provided by Rajesh & Co. correct under GST law? If not, please elaborate.
5. *The supplies of commodity 'y' to the market are channelled through a State Marketing Corporation which conducts an auction each day to arrive at the price. Gupta and Co. supplies commodity 'y' through the State Marketing Corporation.*

How will the supply of 'y' made by Gupta and Co. to State Marketing Corporation be valued for paying tax?
6. *Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon is sold for value of ₹ 900 but is redeemable for supplies worth ₹ 1000.*

What is the value of supply of such coupon under GST law?

7. A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. The drug intermediate is exclusive to this company, and there is no market sale in India of this drug intermediate. Goods of like kind and quality are also not available. After conversion, the finished product is sold from the said unit itself by the company.

How will the value of the supply of this drug intermediate be determined under GST law?

8. Dushyant rents out a commercial building owned by him to Bharat for the month of December, for which he charges a rent of ₹19,50,000. Dushyant pays the maintenance charges of ₹1,00,000 (for the December month) as charged by the local society. These charges have been reimbursed to him by Bharat. Also, Dushyant has paid municipal tax of ₹2,85,000 which he has not charged from Bharat.

You are required to determine the value of supply and the GST liability of Dushyant for the month of December assuming CGST and SGST rates to be 9% each.

Note: All the amounts given above are exclusive of GST.

9. Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.:

Particulars	Amount (₹)
List price of the goods (exclusive of taxes/duties and discounts)	76,000
Special packing at the request of customer to be charged to the customer	5,000
Duty levied by local authority on the sale of such goods	4,000
CGST and SGST charged separately in invoice	14,400
Price linked subsidy received from an NGO in relation to the goods sold (The price of ₹76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd.

10. Binaca Electronics Ltd. (hereinafter referred to as BEL) is engaged in manufacturing televisions. It is registered in the State of Haryana. It has appointed distributors across the country who sell the televisions manufactured by it.

The maximum retail price (MRP) printed on the package of a television is ₹ 12,000. The applicable rate of GST on televisions is 18%. BEL dispatches the stock of televisions to its distributors ordered by them on a quarterly basis.

In order to promote its sales, the Sales Head of BEL has formulated a sales promotion scheme on 1st April. Under this scheme, BEL offers a discount of 10% (per television) on televisions supplied to the distributors if the distributors sell 500 televisions in a quarter.

The discount is offered on the price at which the televisions are sold to the distributors (excluding all charges and taxes).

It appoints Shah Electronics (an unrelated party as per GST Law) as its distributor in Haryana on 1st April and dispatches 750 televisions on 8th April as stock for the quarter April-June.

BEL has sold the televisions to distributor - Shah Electronics at ₹ 8,400 per television (exclusive of applicable taxes). Shah Electronics has requested BEL for a special packing of the televisions delivered to it for which BEL has charged ₹ 1,200 per television.

Shah Electronics places a purchase order of 1,000 televisions with BEL for the quarter July-September. The distributor reports sales of 700 televisions for the quarter April-June and 850 televisions for the quarter July-September.

The discount policy offered by BEL as explained above is also available to Shah Electronics as per the distributorship agreement.

While Shah Electronics reverses the input tax credit availed for the quarter July-September, it has failed to reverse the input tax credit availed for the quarter April-June.

Examine the scenario with reference to section 15 and compute the taxable value of televisions supplied by BEL to Shah Electronics during the quarters April-June and July-September assuming the rate of tax applicable on the televisions as 18%.

11. Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:

- (i) 1,000 US \$ are purchased from Nandi Enterprises at the rate of ₹ 74 per US \$. RBI reference rate for US \$ on that day is ₹ 74.60.
- (ii) 2,000 US \$ are sold to Menavati at the rate of ₹ 74.50 per US\$. RBI reference rate for US \$ for that day is not available.

Determine the value of supply in each of the above cases in terms of rule 32(2)(a) and rule 32(2)(b).

12. Rolly Polly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. Rolly Polly Manufacturers Ltd. enters into a contract with Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), to meet all the legal formalities in getting the said machine cleared from the customs station.

Apart from this, Rolly Polly Manufacturers Ltd. authorises Rudra Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd. which shall be reimbursed by Rolly Polly Manufacturers Ltd. to Rudra Logistics on the actual basis in addition to agency charges.

Rudra Logistics provided following details in the invoice issued by it to Rolly Manufacturers Ltd.:

S. No.	Particulars	Amount (₹)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000

(iii)	Charges for transportation of machine from Kandla port, Gujarat to its Rudra Logistics' godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transportation of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	28,000
(v)	Prepared and submitted Bill of Entry and paid customs duty	5,00,000
(vi)	Dock dues paid	50,000
(vii)	Port charges paid	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

Compute the value of supply made by Rudra Logistics with the help of given information.

Would your answer be different if Rudra Logistics has charged ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.?

13. Rustagi & Co. manufactures customized products at its unit situated and registered in Madhya Pradesh. Cost of production of 1,000 products for Rustagi & Co. is ₹ 20,00,000.

These products require further processing before sale, and for this purpose products are transferred from its Madhya Pradesh unit to its another unit situated and registered in Himachal Pradesh. The value declared on the invoice for such transfer is the cost of production of such products.

The Himachal Pradesh unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of

the same kind and quality. Thereafter, the Himachal Pradesh unit sells these processed products to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of Himachal Pradesh unit.

1,000 units of the products of same kind and quality are supplied to Himachal Pradesh unit, at the time when goods are sent by Madhya Pradesh unit, by another manufacturer located in Himachal Pradesh.

The ex-factory price of such goods is ₹ 19,00,000. The Himachal Pradesh unit of Rustagi & Co. is eligible for full ITC.

Determine the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit.

14. *Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to an unrelated party, Vimal Traders for consideration of ₹ 2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises [valuing ₹ 10,000 (exclusive of GST)] as an additional consideration for such supply.*

At the same time, Dev Enterprises has supplied the same goods to another unrelated person at price of ₹ 2,97,360 (inclusive of GST@18%).

You are required to:

- (1) Determine the value of goods supplied by Dev Enterprises to Vimal Traders.*
 - (2) What would your answer be if price of ₹ 2,97,360 is not available at the time of supply of goods to Vimal Traders? Explain briefly.*
15. *Chirayu Life Insurance Company Limited (CLICL) has collected premium from policy subscribers. It does not intimate the amount allocated for investment to subscribers of the policy at the time of supply of insurance services. The company has provided the following details in relation to its receipts:*

Sl. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new policy subscribers	40,00,000

3.	Renewal premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by CLICL in terms of rule 32(4).

16. Aviant Ltd., registered in Noida (Uttar Pradesh), is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:

- The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹42,00,000.

However, the actual price at which the machinery is supplied to an individual customer varies within a range of $\pm 10\%$ depending upon the terms of contract of supply with the particular customer.

- Apart from the price of the machinery, Aviant Ltd. charges from the customer the following incidental expenses:
 - ◆ associated handling and loading charges of ₹10,000
 - ◆ installation and commissioning charges of ₹1,00,000
 - The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in case of each supply of machinery.
 - Transportation of machinery to the customer's premises is arranged by Aviant Ltd. through a third-party service provider [Goods Transport Agency (GTA)].
- The customer enters into a separate service contract with the GTA and pays the freight directly to it.
- A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises.

In the event of failure to make the payment within the stipulated time, the company-

- ◆ recovers the discount given at the time of receiving payment from the customer (no separate amount of GST is recovered); and
 - ◆ charges simple interest @ 1% per month or part of the month (no separate amount of GST is recovered) on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.
- For every machinery supplied, Aviant Ltd. receives a price linked subsidy of ₹ 2,00,000 from its holding company Diligent Ltd.

Aviant Ltd. has supplied a machinery to an unrelated party, Daffodil Pvt. Ltd. on 29th August at a price of ₹ 40,00,000 (excluding all taxes). Invoice was issued on 29th August by Aviant Ltd.

The corporate office of Daffodil Ltd., which is at New Delhi, has entered into contract with Aviant Ltd. for supply of machinery. However, the machinery has been installed at Daffodil Pvt. Ltd's registered manufacturing unit located in Gurugram (Haryana). Daffodil Pvt. Ltd. has paid the freight directly to the GTA.

Discount @ 2% on the price of machinery excluding taxes was given to Daffodil Pvt. Ltd. as it agreed to make the payment within 15 days. However, Daffodil Pvt. Ltd. paid the consideration on 30th September.

Assume the rates of taxes to be as under:

<i>Bottle cap making machine</i>		
CGST – 6%	SGST – 6%	IGST – 12%
<i>Service of transportation of goods</i>		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
<i>Other services involved in the above supply</i>		
CGST – 9%	SGST – 9%	IGST – 18%

Calculate the GST liability [CGST, SGST or IGST, as the case may be] with respect to the supply of machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.



ANSWERS/HINTS

1. The statement is not correct. CBIC vide *Circular No. 76/50/2018 GST dated 31.12.2018* (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.
2. *Circular No. 47/21/2018 GST dated 08.06.2018* has clarified that while calculating the value of the supply made by the component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him, the value of such moulds and dies shall not be added to the value of supply made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

3. (i) The given case is a case of staggered discounts where rate of discount increases with increase in purchase volume. Such discounts are shown on the invoice itself. Therefore, the same are excluded to determine the value of supply.
- (ii) The given case is a case of volume discount which are offered by the suppliers to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply which can be specifically linked to the relevant invoices though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. Such type of volume discounts are excluded/deducted to determine the value of supply provided they satisfy the parameters laid down in section 15(3) including the reversal of ITC by the recipient of the supply as is

attributable to the discount on the basis of document (s) issued by the supplier.

- (iii) This is a case of secondary discounts. These are the discounts which are not known at the time of supply or are offered after the supply is already over as per the agreement made at or before the time of supply. Therefore, such discounts shall not be excluded while determining the value of supply.
4. Rajesh & Co. gets a car along with driver (including the fuel) for the whole year, which is an additional non-monetary consideration for its services. The equivalent monetary value of such additional consideration must be added to the retainership fee (₹ 15 lakh) in order to arrive at the value of the taxable service provided by Rajesh & Co, as per rule 27 relating to valuation.
5. The State Marketing Corporation is an 'agent' in the meaning of the expression as defined in section 2(5), which includes an auctioneer. Therefore, the value of supply of 'y' will be determined in terms of rule 29 relating to valuation.

There is no open market for the first supply of commodity 'y', as it is compulsorily supplied to the State Marketing Corporation. However, Gupta & Co. has the option of valuing the supply of 'y' at 90% of price of goods of like kind and quality sold by the State Marketing Corporation to its unrelated customers.

If the value cannot be determined by this method, it needs to be determined on the basis of the cost plus 10% mark up as per rule 30 or on the basis of Best Judgement Method as per rule 31, in that order.

6. In terms of rule 32(6) relating to valuation, the value of a coupon is equal to the money value of the goods redeemable against it. Therefore, though the coupon is sold for ₹ 900, its value is ₹ 1000.
7. Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 relating to valuation.

There is no open market value of the drug intermediate as also there are no like goods. Therefore, value of supply of such drug intermediate will be determined in terms of clause (c) of rule 28 i.e., by using rule 30. Thus, the value of supply of such drug intermediate will be 110% of its cost of production or manufacture.

However, if the recipient unit is eligible for full ITC, the value declared in the invoice by the supplier will be deemed to be the open market value of the drug intermediate and thus, the invoice value will be the value of taxable supply.

8. Computation of the value of supply and the GST liability of Dushyant for the month of December

Particulars	Amount (₹)
Rent of the commercial building	19,50,000
Maintenance charges paid to the local society, reimbursed by Bharat [Note 1]	1,00,000
Municipal tax paid by Dushyant [Note 2]	Nil
Value of supply	20,50,000
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Notes:

- (1) Since such charges are reimbursed by the tenant (Bharat), such charges ultimately form part of the rent paid by Bharat to Dushyant and thus, form part of the value as per section 15(2)(c).
- (2) Since municipal tax is paid by the supplier (Dushyant) and not charged to the recipient, the same is not includible in the value.

9. Computation of value of taxable supplies by Vayu Ltd.

Particulars	₹
List price of the goods	76,000
Add: Special packing [Note 1]	5,000
Duty levied by local authority on sale of goods [Note 2]	4,000
CGST and SGST charged [Note 2]	-
Subsidy received from an NGO [Note 3]	5,000

Less: Discount offered = 3% of List price = ₹ 76,000 × 3% [Note-4]	(2,280)
Value of taxable supplies	87,720

Notes:

1. Being incidental expenses charged by the supplier to the recipient of supply, packing charges are includible in the value as per section 15(2)(c).
 2. Taxes, duties, etc. levied under any law for the time being in force other than CGST, SGST/UTGST, IGST are includible in the value as per section 15(2)(a).
 3. Subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15(2)(e).
 4. Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a).
- 10.** Section 15(3)(a) allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction.

Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) if-

- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In the given case, Shah Electronics is entitled for 10% discount on televisions supplied by BEL for the quarters April-June as well as July-September as it has sold more than 500 televisions in each of these quarters. However, since the sales targets are achieved after the entire stock for the respective quarters of April-June and July-September has been dispatched, the discounts on the

televisions supplied to Shah Electronics for the quarters of April-June and July-September is a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to televisions supplied to Shah Electronics for the quarters of April-June and July-September) provided Shah Electronics reverses the input tax credit attributable to the discount on the basis of document issued by BEL.

The value of supply for the quarters of April-June and July-September will thus, be computed as under:

Computation of value of supply for the quarter - April-June

Particulars	Amount (₹)
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
<i>Add:</i> Packing expenses [Note 2]	1,200
<i>Less:</i> Discount [Note 3]	_____ Nil
Value of taxable supply of one unit of television	9,600
Value of taxable supply of televisions for the quarter April-June [₹ 9,600 x 750]	72,00,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).
- (3) Since Shah Electronics has not reversed the input tax credit attributable

to such discount on the basis of document issued by BEL, the conditions specified in section 15(3)(b) have not been fulfilled. Thus, the post-supply discount will not be allowed as deduction from the value of supply.

Computation of value of supply for quarter - July-September

Particulars	Amount (₹)
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	(840)
Value of taxable supply of one unit of television	8,760
Value of taxable supply of televisions for the quarter July-September [₹ 8,760 x 1,000]	87,60,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
 - (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).
 - (3) Since all the conditions specified in section 15(3)(b) have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply. The input tax credit to be reversed will work out to be ₹1,51,200 [1,000 x (8,400 x 10%) x 18%].
- 11.** Rule 32(2) prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

Determination of value under rule 32(2)(a)

- (i) Value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

= (RBI reference for US \$ - Buying rate of US \$) × Total number of units of US \$ bought

= (74.6 – 74) × 1,000

= ₹ 600/-

- (ii) When the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

= 1% of the gross amount of Indian Rupees received

= 1% of (74.50 × 2,000) = ₹ 1,490/-

Determination of value under rule 32(2)(b)

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be –

S. No.	Currency exchanged	Value of supply
1.	Upto ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - 1,00,000)
3.	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - 10,00,000) OR ₹ 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

(i) Gross amount of currency exchanged = ₹ 74 × 1,000 = ₹ 74,000.

Since the gross amount of currency exchanged is less than ₹ 1,00,000, value of supply is 1% of the gross amount of currency exchanged i.e. 1% of ₹ 74,000 or ₹ 250, whichever is higher, i.e. = ₹ 740/-

(ii) Gross amount of currency exchanged = ₹ 74.50 × 2,000 = ₹ 1,49,000.

Since the gross amount of currency exchanged exceeds ₹ 1,00,000 but is less than ₹ 10,00,000, value of supply is ₹ 1,000 + 0.50% of (₹ 1,49,000 - ₹ 1,00,000), i.e. = ₹ 1,245/-

12. As per explanation to rule 33, a “pure agent” means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil **all** the above conditions in order to qualify as a pure agent.

In the given case, Rudra Logistics has entered into a contractual agreement with recipient of supply, Rolly Polly Manufacturers Ltd., to incur, on behalf of such recipient, the **expenses mentioned in S. No. (ii) to (vii)** incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Rudra Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Rudra Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Rudra Logistics qualifies as a pure agent.

Further, rule 33 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Rudra Logistics as a pure agent of Rolly Polly Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Rudra Logistics is as follows:

Particulars	Amount (₹)
Agency charges	5,00,000
<i>Add:</i> Unloading of machine at Kandla port, Gujarat	Nil
Charges for transport of machine from Kandla port, Gujarat to its godown in Ahmedabad, Gujarat	Nil
Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	Nil

Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	45,000
Travelling expenses	50,000
Telephone expenses	2,000
Value of supply	5,97,000

Yes, the answer would be different. If lump sum amount of ₹ 13,00,000 is paid then the value of supply shall be ₹ 13,00,000 and tax shall be charged on value of supply since individual cost are not given.

13. As per section 25(4), a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Rustagi & Co. in Madhya Pradesh and Himachal Pradesh are distinct persons under GST.

As per rule 28, the value of the supply of goods between distinct persons, other than where the supply is made through an agent, shall –

- (a) be the open market value of such supply;
- (b) if open market value is not available, be the value of supply of goods of like kind and quality;
- (c) if value cannot be determined under the above methods, be cost of the supply plus 10% mark-up or be determined by other reasonable means, in that sequence.

Rule 28 also provides that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Further, rule 28 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice by the supplier shall be deemed to be the open market value of the goods or services.

In the given case, the option of valuing the goods @ 90% of the price charged by the recipient to his unrelated customer is not available as the goods are not further supplied 'as such' but only after processing at Himachal Pradesh unit. However, since the Himachal Pradesh unit is eligible for full ITC, the value declared by the Madhya Pradesh unit in the invoice for transfer of such products, i.e. ₹ 20,00,000 shall be deemed to be the open market value of the products.

Thus, the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit in terms of rule 28 is the open market value of such products which is ₹ 20,00,000.

- 14. (1)** In the given case, price is not the sole consideration for the supply. Apart from monetary consideration, the buyer has given some material to the supplier as consideration for such supply. Hence, the value of the supply cannot be determined on the basis of the transaction value in terms of section 15(1).

Here, the value will be determined with the help of rule 27 which specifies that where the consideration for a supply is not wholly in money, the value will be the open market value.

Open market value of a supply means the full value in money, excluding the applicable GST, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Therefore, in the given case, the open market value of the goods supplied is ₹ 2,52,000 ($₹ 2,97,360 \times 100/118$) and is therefore, the value of such goods.

- (2)** Rule 27 further provides that if open market value of the supply is not known, the value of the supply will be the consideration in money plus the money equivalent to the non-monetary consideration, if such amount is known at the time of supply.

Therefore, the value in the given case will be (₹ 2,95,000 x 100/118) + ₹ 10,000, which is ₹ 2,60,000.

15. As per rule 32(4), the value of supply of services in relation to life insurance business, when the amount allocated for investment/ savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is-

- (i) in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- (ii) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- (iii) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by CLICL will be computed as under:

Computation of value of supply for CLICL

Particulars	Amount (₹)
Premium for only risk cover	25,00,000
Premium from new policy subscribers 25% of ₹ 40,00,000	10,00,000
Renewal premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy 10% of ₹ 1,00,00,000	10,00,000
Total value of supply	55,00,000

16. **Computation of GST liability of Aviant Ltd.**

Particulars	(₹)
Price of machine [Note 1]	40,00,000
<i>Add:</i> Handling and loading charges [Note 2]	10,000

Installation and commissioning charges [Note 3]	1,00,000
Transportation cost [Note 4]	Nil
Price linked subsidy from Diligent Ltd. [Note 5]	2,00,000
Total price of the machine	43,10,000
Less: 2% cash discount on price of machinery = ₹ 40,00,000 × 2% [Note 6]	<u>(80,000)</u>
Taxable value of supply	42,30,000
Tax liability for the month of August [Note 10]	
IGST @ 12% [Note 7 and Note 8] – [A]	5,07,600
Tax liability for the month of September [Note 10]	
Interest collected @ 2% on ₹ 41,10,000 [Note 9]	82,200
Add: Cash discount recovered [Note 9]	<u>80,000</u>
Value of interest and cash discount inclusive of tax	1,62,200
IGST = (₹1,62,200/112) × 12 - [B]	17,379
Total IGST payable on the machinery [A] + [B]	5,24,979

Notes:

- (1) As per section 15(1), the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c).
- (3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c).

- (4) Transportation cost has not been included in the value of supply of the machinery as it is a separate service contract between the customer and the third-party service provider. The customer pays the freight directly to the service provider.

The supplier (Aviant Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account. Therefore, there will be no impact from valuation point of view on transport expenses incurred for supply of machinery as the supplier is not the party to such supply of services.

- (5) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply in terms of section 15(2)(e).
- (6) Cash discount was deducted by Aviant Ltd. upfront at the time of supply on 1st August, and hence, the same is excluded from the value of supply as it did not form part of the transaction value.
- (7) In the given case-
- ◆ the location of the supplier is in Noida (UP); and
 - ◆ the place of supply of machinery is the place of installation of the machinery i.e., Gurugram (Haryana) in terms of section 10(1)(d) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

- (8) The given supply is a composite supply involving supply of goods (machinery) **and** services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.

As per section 8(a), a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.

- (9) Interest for the delayed payment (which excludes subsidy related amount of Rs 2,00,000 as the same was not recoverable from the

recipient) of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d). Further, cash discount recovered will also be includible in the value of supply as now the transaction value i.e., the price actually paid for the machinery is devoid of any discount.

The cash discount recovered and interest respectively are inclusive of tax. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35.

- (10) Invoice for the supply has been issued on 29th August. Thus, the time of supply of goods is 29th August in terms of section 12(1)(a).

As per section 12(6), the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received and cash discount recovered on account of delayed payment of consideration is 30th September, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.



TEST YOUR KNOWLEDGE

1. *Xenon Pvt. Ltd., a registered supplier in Agra, is engaged in the manufacture of taxable goods. Goods valued at ₹ 10,50,000 were supplied by the company to Freshbite Pvt. Ltd., a registered supplier located at Firozabad, without the cover of an invoice with a fraudulent intent. Since the company evaded tax by not issuing the invoice for the supply, a show cause notice was issued by the proper officer under section 74 requiring the company to pay tax @ 12% [₹ 1,26,000] and applicable interest and penalty. The company paid the tax, interest and penalty after the order was passed by the proper officer.*

Examine the ITC entitlement of Freshbite Pvt. Ltd. in respect of tax of ₹ 1,26,000 paid by Xenon Pvt. Ltd.

2. *Flamingo Ltd. is an airlines providing passenger transportation services by air. The company offers meals of premium quality to passengers on board the aircraft. The value of such meals is compulsorily included in the price of the air ticket. The company avails outdoor catering services of Dhaniaram Pvt. Ltd. for providing such meals to its customers.*

Examine whether Flamingo Ltd. can avail ITC on such outdoor catering service availed by it.

3. *Jumbo Sales Pvt. Ltd., a supplier of readymade garments, announced 'Buy One get Two free' offer on Men's T-Shirts on Diwali to boost its sales.*

You are required to advise the company on the availability of ITC in respect of inward supplies used in relation to such supply.

4. *A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a notification issued under section 11 of the CGST Act. The fabric is exclusively procured for such supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory as well.*

The turnover (exclusive of taxes) of the other products of the factory and exempted uniforms in July is ₹ 4 crore and ₹ 1 crore respectively, the ITC on thread and lining material procured in July is ₹ 5000 and ₹ 15000 respectively.

Calculate the amount of eligible ITC in respect of procurement of thread and lining material.

5. *Ceramity Ltd. has following units:*

A: *Factory in Tumkur, Karnataka; turnover of ₹ 27 crores in F.Y. 2020-23;*

B: *Service centre in Hyderabad, Telangana; turnover of ₹ 1 crore in F.Y. 2022-23;*

C: *Service centre in Chennai, Tamil Nadu; turnover of 2 crores in F.Y. 2022-23;*

Ceramity Ltd.'s corporate office functions as an ISD. It has to distribute ITC of ₹ 9 lakh for May, 2023. Of this, an invoice involving tax of ₹ 3 lakh pertains to technical consultancy for Tumkur unit.

Explain in brief in what manner should the ITC be distributed?

6. *A registered supplier of taxable goods supplied goods valued at ₹ 2,24,000 (inclusive of CGST ₹ 12,000 and SGST ₹ 12,000) to Mohan Ltd. under forward charge on 15th August for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15th August. Mohan Ltd. availed credit of ₹ 24,000 on 20th September by filing Form GSTR-3B for August month. However, Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail ITC on such supply?*

Discuss ITC provisions if Mohan Ltd. makes the payment of ₹ 2,24,000 to the supplier on 18th March of next calendar year.

7. *State the conditions that need to be followed by an input service distributor for distribution of credit.*

8. *With reference to the provisions of section 17, examine the availability of ITC in the following independent cases:*

(i) *MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently.*

(ii) *Shah & Constructions procured cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients.*

(iii) *ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truck used for transporting its finished goods.*

9. On 25th August, M/s Agarwal & Agarwal, a registered supplier of taxable goods located in Bengaluru (Karnataka), purchased one machine for ₹ 12,39,000 (including IGST) from one supplier of Maharashtra who issued the invoice on the same date. M/s Agarwal & Agarwal received the machinery on the same day and availed ITC for the eligible amount.

M/s Agarwal & Agarwal used the machine in the process of manufacture of taxable goods. However, M/s Agarwal & Agarwal sold this machine to Mr. Suresh Kumar of Andhra Pradesh on 20th August of next year for ₹ 7,50,000 (excluding IGST).

With reference to section 18(6), determine the amount payable, if any, by M/s Agarwal & Agarwal at the time of sale of the machine.

Note: The applicable rate of IGST is 18%.

10. Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of ITC in respect of the following expenses incurred by it during the course of its business operations:
- Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.
 - Works contract services availed for constructing a car parking shed in its premises
11. With the help of information given below in respect of a manufacturer for the month of September, compute the ITC credited to the Electronic Credit Ledger, for the month. Also, compute the amount of ITC to be added to the output tax liability for the month of September. Ignore interest, if any.

Particulars	Amount (₹)
Outward supply of taxable goods (exclusive of taxes)	70,000
Outward supply of exempt goods	40,000
Total turnover	1,10,000
Inward supplies	GST paid (₹)
Capital goods used exclusively for taxable outward supply	2,000

Capital goods used exclusively for exempt outward supply	1,800
Capital goods used for both taxable and exempt outward supply	4,200

Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

12. X, a manufacturer of roofing sheets, is having ₹ 1,60,000 as opening balance of ITC for June month. He provides the following information pertaining to the goods and services procured during the month of June:

- (1) Input tax on raw materials is ₹ 40,000. The raw material is used for making both taxable and exempt supplies.
- (2) Input tax on catering services procured from 'Harvest Caterers' in connection with his housewarming ceremony is ₹ 10,000.
- (3) Input tax on raw materials used exclusively in manufacture of exempt supplies of ₹ 2 lakh is ₹ 20,000.
- (4) Input tax on cosmetic and plastic surgery of manager of the factory is ₹ 30,000.

Total taxable turnover for the month of June is ₹ 60 lakh exclusive of tax.

Compute the ITC credited for the month of June to the Electronic Credit Ledger and net GST payable from Electronic Cash Ledger by X for the month of June. Rate of GST is 18% (Ignore CGST, SGST or IGST and provisions of rule 86B for the sake of simplicity).

Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. All the purchases are made from registered suppliers.

13. Sarani Weavers, at Pune, Maharashtra is a registered input service distributor and intends to distribute ITC for the month of March. The following are the details available for such distribution:

Branch	Turnover of the last quarter (₹)	ITC specifically attributable to the branch (₹)
Ganganagar Branch (Rajasthan)	10,00,000	IGST – ₹ 12,000 CGST – ₹ 3,000 SGST – ₹ 3,000
Madhugiri Branch (Karnataka)	5,00,000	Nil
Kosala Branch (UP)	15,00,000	Nil
Mumbai Branch (Maharashtra)	20,00,000	IGST – ₹ 1,50,000 CGST – ₹ 15,000 SGST – ₹ 15,000

ITC available on input services used commonly for all branches is as under:

CGST - ₹ 60,000

SGST - ₹ 60,000

IGST - ₹ 1,20,000

ITC (IGST) of ₹ 10,000 pertaining to March (last year) was inadvertently not distributed. Whether the same can be considered for distribution in March this year?

Madhugiri, Karnataka branch uses input services to manufacture exempted products. Turnover excludes duties & taxes payable to Central and State Government.

Determine the manner of input tax distribution.

14. George Pvt. Ltd., a registered supplier of goods at Kerala who pays GST under regular scheme, has made the following transactions (exclusive of tax) during a tax period:

Purchases (₹)	Sales (₹)	Tax Rate
5,00,000	10,00,000 [Sale made to registered person in New Delhi]	IGST - 18% CGST – 9%

[Purchases made from registered person in New Delhi]		SGST- 9%
2,50,000 [Purchases made from registered person in Trivandrum, Kerala]	8,00,000 [Sales made to registered person in Trivandrum]	

The company has complied with all the conditions for availing the ITC. The following further information regarding various opening balances available with it for the tax period, is provided by the company:

CGST (₹)	SGST (₹)	IGST (₹)
50,000	30,000	1,00,000

Compute the net CGST, SGST and IGST payable from the Electronic Cash Ledger by George Pvt. Ltd. for the tax period as also ITC to be carried forward to next tax period, if any.

15. Quanto Enterprises is not required to register under CGST Act. However, it applied for voluntary registration on 17th September. Registration certificate has been granted to the firm on 25th September. The CGST and SGST liability of the firm for the month of September is ₹ 24,000 each. The firm is not engaged in making inter-State outward taxable supplies.

Quanto Enterprises provides the following information regarding capital goods and inputs held in stock by it as on 24th September:

Particulars	Amount (₹)
Inputs procured on 2 nd September lying in stock	
- CGST @ 6%	4,500
- SGST @ 6%	4,500
Input received on 21 st July contained in semi-finished goods held in stock:	
- CGST @ 6%	7,500

- SGST @ 6%	7,500
Value of inputs contained in finished goods held in stock- ₹ 2,00,000 [Such inputs were procured on 19 th September last year. Invoice for the goods was also issued on the same day]	
- IGST @ 18%	36,000
Inputs valued at ₹ 50,000 procured on 13 th September lying in stock:	
- IGST @ 18%	9,000
Capital goods procured on 12 th September	
-CGST @ 6%	12,000
-SGST @ 6%	12,000

You are required to compute the net GST payable from Electronic Cash Ledger by Quanto Enterprises for the month of September assuming that conditions for availing ITC are fulfilled subject to the information given above.

You are also required to mention reasons for treatment of all above items.

16. B & D Company, a partnership firm, registered in Nagpur, Maharashtra is a wholesaler of taxable product 'P' and product 'Q' exempted by way of a notification. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes) and stock (exclusive of taxes):

Particulars	Turnover for the quarter ended 30 th June (₹)	Turnover for the quarter ended 30 th September (₹)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

Particulars	Stock as on 30 th June (₹)	Stock as on 30 th September (₹)	Stock as on 31 st October (₹)
'P'	25,00,000	10,00,000	3,60,000
'Q'	10,00,000	2,00,000	1,20,000

The entire stock of the products 'P' and 'Q' available with the firm as on 30th September is purchased during the said half year except a consignment of product 'P' valuing ₹ 3,00,000, which was purchased in the April month of the preceding financial year. The said stock could not be sold during the month of October. In the current financial year, in the month of October, no purchases were made, and the products were sold with a profit margin of 20% on sales [exclusive of taxes].

The extract of the only bill book maintained by the firm showed the following details-

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	1 st October	2,00,000	3,000	2,03,000
2307	1 st October	1,33,000	5,250	1,38,250
2308	2 nd October	67,000	39,250	1,06,250
2309	3 rd October	58,750	33,750	92,500
2310	5 th October	1,00,000	-	1,00,000
2311	6 th October	94,000	6,000	1,00,000
2312	6 th October	-	17,000	17,000
2313	8 th October	50,000	6,000	56,000
2314	9 th October	60,000	9,000	69,000
2315
.....

All the above amounts are exclusive of taxes, wherever applicable

Compute the ITC to be credited to the Electronic Credit Ledger of the B & D Company, when it exits composition scheme and becomes liable to pay tax under regular scheme, in accordance with the provisions of section 18(1)(c).

Note: Make suitable assumptions wherever required. Stock is valued at cost price.

17. XYZ Pvt. Ltd. is a manufacturing company registered under GST in the State of Uttar Pradesh. It manufactures two taxable products 'Alpha' and 'Beta' and one exempt product 'Gama'. On 1st October, while product 'Beta' got exempted through an exemption notification, exemption available on 'Gama' got withdrawn on the same date. The turnover (exclusive of taxes) of 'Alpha', 'Beta' and 'Gama' in the month of October was ₹ 9,00,000, ₹ 10,00,000 and ₹ 6,00,000 respectively.

XYZ Pvt. Ltd. has furnished the following details:

S. No.	Particulars	Price (₹)	GST (₹)
(a)	Machinery 'U' purchased on 1 st October for being used in manufacturing all the three products	2,00,000	36,000
(b)	Machinery 'V' purchased on 1 st October for being used in manufacturing product 'Alpha' and 'Gama'	1,00,000	18,000
(c)	Machinery 'W' purchased on 1 st October for being exclusively used in manufacturing product 'Beta'	3,00,000	54,000
(d)	Machinery 'Y' purchased on 1 st October four years ago for being exclusively used in manufacturing product 'Beta'. From 1 st October, such machinery will also be used for manufacturing product 'Gama'.	4,00,000	72,000

(e)	Machinery 'Z' purchased on 1 st October two years ago for being used in manufacturing all the three products	3,00,000	54,000
(f)	Raw Material used for manufacturing 'Alpha' purchased on 5 th October	1,50,000	27,000
(g)	Raw Material used for manufacturing 'Beta' purchased on 10 th October	2,00,000	36,000
(h)	Raw Material used for manufacturing 'Gama' purchased on 15 th October	1,00,000	18,000

Compute the following:

- (i) Amount of ITC to be credited to Electronic Credit Ledger, for the month of October
- (ii) Amount of aggregate value of common credit (T_c)
- (iii) Common credit attributable to exempt supplies, for the month of October
- (iv) GST liability of the company payable through Electronic Cash Ledger, for the month of October if opening balance of ITC is nil.

Note: Assume that all the procurements made by the company are from States other than Uttar Pradesh. Similarly, the company sells all its products in States other than Uttar Pradesh. Rate of IGST is 18%. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Ignore interest, if any and make suitable assumptions wherever required.

18. 'All-in-One Store' is a retail chain of departmental store having presence in almost all metro cities across India. Both exempted as well as taxable goods are sold in such Stores. The Stores operate in rented properties. All-in-One Stores pay GST under regular scheme.

In Mumbai, the Store operates in a rented complex, a part of which is used by the owner of the Store for personal residential purpose.

All-in-One Store, Mumbai furnishes following details for a month:

- (i) *Aggregate value of various items sold in the Store:*
Taxable items – ₹42,00,000
Items exempted vide a notification – ₹12,00,000
Items not leviable to GST – ₹3,00,000
- (ii) *Mumbai Store transfers to another All-in-One Store located in Goa certain taxable items for the purpose of distributing the same as free samples. The value declared in the invoice for such items is ₹5,00,000. Such items are sold in the Mumbai Store at ₹8,00,000.*
- (iii) *Aggregate value of various items procured for being sold in the Store:*
Taxable items – ₹55,00,000
Items exempted vide a notification – ₹15,00,000
Items not leviable to GST – ₹5,00,000
- (iv) *Freight paid to goods transport agency (GTA) for inward transportation of taxable items – ₹1,00,000*
- (v) *Freight paid to GTA for inward transportation of exempted items – ₹80,000*
- (vi) *Freight paid to GTA for inward transportation of non-taxable items – ₹20,000*
- (vii) *Monthly rent payable for the complex – ₹5,50,000 (one third of total space available is used for personal residential purpose).*
- (viii) *Activity of packing the items and putting the label of the Store along with the sale price has been outsourced. Amount paid for packing of all the items – ₹2,50,000*
- (ix) *Salary paid to the regular staff at the Store – ₹2,00,000*
- (x) *GST paid on inputs used for personal purpose – ₹5,000*
- (xi) *GST paid on rent a cab services availed for transportation of employees, which is not obligatory under any law – ₹4,000*
- (xii) *GST paid on items given as free samples – ₹4,000*

Given the above available facts, you are required to compute the following:

- A. Input tax credit (ITC) credited to the Electronic Credit Ledger
- B. Common Credit
- C. ITC attributable towards exempt supplies out of common credit
- D. Eligible ITC out of common credit
- E. Net GST payable from Electronic Cash Ledger for the month if opening balance of ITC is nil.

Note:

- (1) GTA has not exercised the option to pay tax itself. Tax is payable on such services @ 5%. Rate of GST in all other cases is 18% (Ignore CGST, SGST or IGST for the sake of simplicity).
 - (2) All the inward supplies are procured from registered suppliers.
 - (3) Wherever applicable, the amounts given are exclusive of taxes.
 - (4) Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.
19. Vansh Shoppe is a retail supplier of both taxable and exempted goods, registered under GST in the State of Rajasthan. Vansh Shoppe has furnished the following details for a month:

		(₹)
(1)	Details of sales:	
	Supply of taxable goods	50,00,000
	Supply of goods not leviable to GST	10,00,000
(2)	Details of goods purchased for being sold in the shop:	
	Taxable goods	45,00,000
	Goods not leviable to GST	4,00,000
(3)	Details of expenses:	
	Monthly rent payable for the shop	3,50,000

Telephone expenses paid (₹ 30,000 for bills of land line phone installed at the shop and ₹ 20,000 towards mobile phone bills of the employees – Mobile phones are also given to employees for official use)	50,000
Audit fees paid to a Chartered Accountant (₹ 35,000 for filing of income tax return & the statutory audit of preceding financial year and ₹ 25,000 for filing of GST return)	60,000
Premium paid on health insurance policies taken for specified employees of the shop as per company policy.	10,000
Freight paid to goods transport agency (GTA) [service taxable @ 5%] for inward transportation of goods not leviable to GST	50,000
Freight paid to goods transport agency (GTA) [service taxable under reverse charge @ 5%] for inward transportation of taxable goods	1,50,000
Goods given as free samples (Not included in taxable goods value of 45,00,000)	5,000

All the above amounts are exclusive of all kind of taxes, wherever applicable.

All the inward and outward supplies made by Vansh Shoppe are from/to registered suppliers within Rajasthan.

Assume, wherever applicable, for purpose of reverse charge payable by Vansh Shoppe, the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively. CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.

There is no opening balance in the electronic cash ledger or electronic credit ledger. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

You are required to compute the following:

(1) Input Tax Credit (ITC) credited to Electronic Credit Ledger

- (2) Common credit available for apportionment
- (3) ITC attributable towards exempt supplies out of common credit
- (4) Net GST payable from Electronic Cash Ledger for the month

20. Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures three taxable products 'M', 'N' and 'O'. Tax on 'N' is payable under reverse charge. The firm also provides taxable consultancy services.

The firm has provided the following details for a tax period:

Particulars	(₹)
Turnover of 'M' (excluding export sales)	14,00,000
Turnover of 'N'	6,00,000
Turnover of 'O' (excluding export sales)	10,00,000
Export of 'M' with payment of IGST (not eligible to avail benefit of merchant exports under Notification No. 41/2017)	2,50,000
Export of 'O' under letter of undertaking	10,00,000
Consultancy services provided to unrelated clients located in foreign countries. In all cases, the consideration has been received in convertible foreign exchange	20,00,000
Sale of building (excluding stamp duty of ₹ 2.50 lakh, being 2% of value) [Entire consideration is received post issuance of completion certificate; building was occupied thereafter]	1,20,00,000
Interest received on investment in fixed deposits with a bank	4,00,000
Sale of shares (Purchase price ₹ 2,40,00,000/-)	2,50,00,000
Legal services received from an advocate in relation to product 'M'	3,50,000

Common inputs and input services used for supply of goods and services mentioned above [Inputs - ₹ 35,00,000; Input services - ₹ 15,00,000]	50,00,000
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With the help of the above-mentioned information, compute the net GST liability of Surana & Sons, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the tax period.

Note: Assume that rate of GST on goods and services are 12% and 18% respectively (Ignore CGST, SGST or IGST for the sake of simplicity). Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Turnover of Surana & Sons was ₹ 85,00,000 in the preceding financial year.

21. M/s XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes -

- excavators for required period at a per hour rate
- manpower for operation of the excavators at a per day rate
- soil-testing and seismic evaluation at a per sample rate.

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

M/s XYZ receives the following services:

- Maintenance services for excavators;
- Health insurance for operators of the excavators;
- Scientific and technical consultancy for soil testing and seismic evaluation.

For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:

- Hire charges for excavators - ₹ 18,00,000
- Service charges for supply of manpower for operation of the excavator - ₹ 20,000
- Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000

The GST paid during the said month on services received by M/s XYZ is as follows:

- Maintenance for excavators - ₹ 1,00,000
- Health insurance for excavator operators - ₹ 11,000
- Scientific and technical consultancy for soil testing and seismic evaluation - ₹ 1,00,000

Compute the net GST payable by M/s XYZ from Electronic Cash Ledger for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12%

Supply of manpower services and soil-testing and seismic evaluation services – 18%

(Ignore CGST, SGST or IGST for the sake of simplicity).

Note: - Opening balance of ITC of GST is nil.

22. V-Supply Pvt. Ltd. is a registered manufacturer of auto parts in Kolkata, West Bengal. The company has a manufacturing facility registered under Factories Act, 1948 in Kolkata. It procures its inputs indigenously from both registered and unregistered suppliers located within as well as outside West Bengal as also imports some raw material from China.

The company reports the following details for a tax period:

Payments	(₹) (in lakh)	Receipts	(₹) (in lakh)
Raw material	3.5	Sales	15
Consumables	1.25		
Transportation charges for bringing the raw material to factory	0.70		
Salary paid to employees on rolls	5.0		

Premium paid on life insurance policies taken for specified employees	1.60		
Audit fee	0.50		
Telephone expenses	0.30		
Bank charges	0.10		

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by the company.

Further, following additional details are furnished by the company in respect of the payments and receipts reported by it:

- (i) Raw material amounting to ₹ 0.80 lakh is procured from Bihar and ₹ 1.5 lakh is imported from China. Basic customs duty of ₹ 0.15 lakh, social welfare surcharge of ₹ 0.015 lakh and integrated tax of ₹ 0.2997 lakh are paid on the imported raw material.

Remaining raw material is procured from suppliers located in West Bengal. Out of such raw material, raw material worth ₹ 0.30 lakh is procured from unregistered suppliers; the remaining raw material is procured from registered suppliers.

Further, raw material worth ₹ 0.05 lakh purchased from registered supplier located in West Bengal has been destroyed due to seepage problem in the factory and thus, could not be used in the manufacturing process.

- (ii) Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 0.25 lakh for running the generator in the factory.
- (iii) Transportation charges comprise of ₹ 0.60 lakh paid to Goods Transport Agency (GTA) in Kolkata and ₹ 0.10 lakh paid to horse pulled carts. GST applicable on the services of GTA is 5% payable under reverse charge.
- (iv) Life insurance policies for specified employees have been taken by the company to fulfill a statutory obligation in this regard. The life insurance service provider is registered in West Bengal.

- (v) *Audit fee is paid to M/s Goyal & Co., a firm of Chartered Accountants registered in West Bengal, for the statutory audit of the preceding financial year.*
- (vi) *Telephone expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use. The telecom service provider is registered in West Bengal.*
- (vii) *Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.*
- (viii) *The breakup of sales is as under:*
Sales in West Bengal – ₹ 7 lakh
Sales in States other than West Bengal – ₹ 3 lakh
Export under LUT – ₹ 5 lakh
- (ix) *The opening balance of ITC with the company for the tax period is:*
CGST - ₹ 0.15 lakh
SGST - ₹ 0.08 lakh
IGST - ₹ 0.09 lakh

Compute (i) Total ITC available with V-Supply Pvt. Ltd. for the tax period; and (ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by V-Supply Pvt. Ltd. for the tax period.

Note-

- (i) *CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.*
- (ii) *The necessary conditions for availing ITC have been complied with by V-Supply Pvt. Ltd., wherever applicable.*

You are required to make suitable assumptions, wherever necessary.

23. *ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machineries. It has provided the following details for a tax period:*

<i>Inward supplies</i>	<i>GST paid (₹)</i>
<i>Health insurance of factory employees as required by the Factories Act, 1948</i>	20,000
<i>Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month</i>	18,000
<i>Work contractor's service used for installation of plant and machinery</i>	12,000
<i>Purchase of manufacturing machine sent directly to job worker's premises under delivery challan</i>	50,000
<i>Purchase of car used by director exclusively for the purpose of business meetings</i>	25,000
<i>Outdoor catering service availed for business meetings</i>	8,000

ABC Company Ltd. also provides service of hiring of machines along with manpower for operation. As per trade practice, machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Outward supply (exclusive of GST) for the tax period are as follows:

<i>Particulars</i>	<i>Value (₹)</i>
<i>Hiring receipts for machine</i>	5,25,000
<i>Service charges for supply of manpower operators</i>	2,35,000

Assume the rates of GST to be as under:

- (i) Service of hiring of machine 12%
 - (ii) Supply of manpower operator service 18%
- (Ignore CGST, SGST or IGST for the sake of simplicity)

Compute the amount of ITC available as also the net GST payable from the Electronic Cash Ledger for the tax period by giving necessary explanations for treatment of various items.

Note: Opening balance of ITC is Nil.

24. Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for a tax period:

Particulars		(₹)
<i>Details of Outward supplies</i>		
(i)	<i>Supplies in Rajasthan</i>	8,75,000
(ii)	<i>Supplies in States other than Rajasthan</i>	3,75,000
(iii)	<i>Export under LUT</i>	6,25,000
<i>Details of expenses</i>		
(i)	<i>Raw materials purchased from registered suppliers located in Rajasthan</i>	1,06,250
(ii)	<i>Raw materials purchased from unregistered suppliers located in Rajasthan</i>	37,500
(iii)	<i>Raw materials purchased from Punjab from registered supplier</i>	1,00,000
(iv)	<i>Integrated tax paid on raw materials imported from USA</i>	22,732
(v)	<i>Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and VAT paid) valuing ₹ 31,250 for running the machinery in the factory</i>	1,56,250
(vi)	<i>Monthly rent for the factory building to the owner in Rajasthan</i>	1,00,000
(vii)	<i>Salary paid to employees on rolls</i>	6,25,000
(viii)	<i>Premium paid on life insurance policies taken for specified employees. Life insurance policies for</i>	2,00,000

specified employees have been taken by Pari Ltd. to fulfill a statutory obligation in this regard. The life insurance service provider is registered in Rajasthan.

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by Pari Ltd.

The opening balance of ITC with Pari Ltd. for the given tax period is-

CGST ₹ 20,000

SGST ₹ 15,000

IGST ₹ 15,000

Assume CGST, SGST and IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

Assume that all the other necessary conditions to avail the ITC have been complied with by Pari Ltd., wherever applicable.

Compute (i) ITC available with Pari Ltd. for the tax period; and (ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by Pari Ltd. for the tax period.

25. *Flowchem Palanpur (Gujarat) has entered into a contract with R Refinery, Abu Road (Rajasthan) on 1st July to supply 10 valves on FOR basis. The following information is provided in this regard:*

- (1) List price per valve is ₹ 1,00,000, exclusive of taxes.*
- (2) One of the conditions of the contract is that Flowchem should ensure a two stage third party inspection for the valves during the manufacturing process. Cost of two stage inspection of ₹ 15,000 (for 10 valves) is directly paid by R Refinery to testing agency.*
- (3) R Refinery requires a special packing for the valves. Cost of special packing is ₹ 10,000 (for 10 valves).*
- (4) Flowchem arranges for erection and testing of the valves supplied by it at R Refinery's site. Cost of erection etc. is ₹ 15,000 (for 10 valves).*
- (5) Goods are dispatched with tax invoice on 20th July and they reach the destination at Abu-Road on 21st July. Lorry freight of ₹ 5,000 has been paid by R Refinery directly to the lorry driver.*

Assume CGST and SGST rates to be 9% each and IGST rate to be 18%. Opening balance of ITC of IGST is Nil, CGST is ₹ 20,000 and SGST is ₹ 20,000. All the given amounts are exclusive of GST, wherever applicable.

Flowchem has also undertaken following local transactions during the month of July on which it has paid CGST and SGST as under:

S. No.	Particulars	Amount paid CGST (₹)	Amount paid SGST (₹)
1.	Availed services of works contractor to erect foundation for fixing the machinery to earth, in the factory.	5,000	5,000
2.	Laid pipelines (from the water source outside the factory) upto the gate of the factory for the purpose of production facility.	10,000	10,000
3.	For the purpose of smooth and convenient mobile communication in its factory, it has installed telecommunication tower of a mobile company (with due permission)	5,000	5,000
4.	It has entered into an agreement with a travel company to provide home travel facility to its employees when they are on leave.	2,500	2,500
5.	It has entered into an agreement with a fitness center to provide wellness services to its employees after office hours	2,000	2,000

Work out the net GST [CGST, SGST or IGST, as the case may be] payable from Electronic Cash Ledger of Flowchem, Palanpur (Gujarat) for the month of July after making suitable assumptions, if any.



ANSWERS/HINTS

1. As per section 17(5), tax paid under sections 74, 129 and 130 is not available as ITC. Further, rule 36(3) also lays down that tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC by a registered person.

In the given case, Xenon Pvt. Ltd. has paid tax in pursuance of an order issued under section 74. Therefore, Freshbite Pvt. Ltd. cannot avail ITC of such tax.

2. As per section 17(5)(i)(b), ITC on supply of *inter alia* food and beverages and outdoor catering is blocked. However, ITC in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

In the given case, Flamingo Ltd. is availing outdoor catering service to provide outdoor catering (meals) to the passengers on board the aircraft. Since ITC in respect of outdoor catering is available if the same is used for making an outward taxable supply as an element of a taxable composite or mixed supply, Flamingo Ltd. can avail ITC on outdoor catering service procured by it as it will be considered as supply of an ancillary service to the passenger transportation services supplied by it (principal supply).

3. It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration.

As per clause (a) of section 7(1) read with clause (c) thereof, goods or services which are supplied free of cost (without any consideration) shall not be treated as supply except in case of activities mentioned in Schedule I.

Circular No. 92/11/2019 GST dated 07.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of sales promotional scheme like 'buy one get one free'. Such promotional offers are not individual supplies of free goods, but a case of two or more individual supplies where a single price is

being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Therefore, the given case is not the case of individual supplies of free goods, but a case of three individual supplies where a single price is being charged for the entire supply. Thus, Jumbo Sales Pvt. Ltd. will be entitled to avail ITC on inputs, input services and capital goods used in relation to supply of T-Shirts as part of such offer.

4. Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be reversed in terms of rule 42.

Credit attributable to exempt supplies = Common credit x (Exempt turnover/ Total turnover)

Common credit = ₹ 15,000 + ₹ 5,000 = ₹ 20,000

Exempt turnover = ₹ 1 crore

Total turnover = ₹ 5 crore [₹ 1 crore + ₹ 4 crore]

Credit attributable to exempt supplies = (₹ 1 crore / ₹ 5 crore) x ₹ 20,000 = ₹ 4,000.

Ineligible credit of ₹ 4,000 will be reversed in Form GSTR-3B. Credit of ₹ 16,000 will be eligible credit for the month of July.

5. As per rule 39(d) relating to ITC, -
 - ₹ 3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.

- ₹ 6 lakh have to be distributed among Tumkur unit and the service centres in Hyderabad and Chennai in proportion of their turnover in the previous FY, that is, in 2020-21
 - o Tumkur unit will get $(27 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = ₹ 5.4 \text{ lakh}$;
 - o Hyderabad service centre will get $(1 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = ₹ 20,000$; and
 - o Chennai service centre will get $(2 \text{ crore} / 30 \text{ crore}) \times 6 \text{ Lakh} = ₹ 40,000$.

Ceramity Ltd. should issue ISD invoices (from GSTN obtained separately for ISD) for distributing ITC (as calculated above) to its units. It should be clearly indicated in the invoices that the same are issued only for distribution of ITC.

6. As per section 16, Mohan Ltd. is eligible to avail ITC of the tax paid on inputs received by it on the basis of the invoice issued by the supplier provided other conditions for availing ITC are fulfilled.

Payment of value of the goods along with the tax to the supplier is not a pre-requisite at the time of availing credit, but Mohan Ltd. has to pay the said amount within 180 days from the date of issue of invoice. If Mohan Ltd, fails to do so, Mohan Ltd. shall pay or reverse an amount equal to the ITC availed in respect of such supply (ITC of ₹ 24,000), proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period immediately following the period of 180 days from the date of the issue of the invoice will be added to its output tax liability with interest under section 50 [Second proviso to section 16(2) read with rule 37].

If Mohan Ltd. makes the payment of ₹ 2,24,000 (Value + tax) to the supplier on 18th March of next calendar year, i.e. after the expiry of 180 days from date of issue of invoice, Mohan Ltd. can avail the credit of ₹ 24,000 while filing form GSTR-3B for the month of March.

7. The following conditions need to be followed by an input service distributor (ISD) for distribution of credit:
- (i) The ISD is required to obtain a separate registration for distribution of credit.
 - (ii) The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.
 - (iii) The amount of the credit distributed shall not exceed the amount of credit available for distribution.
 - (iv) The credit related to an input service must be distributed only to the particular recipient to whom that input service is attributable.
 - (v) If the input service is attributable to more than one recipient, the relevant ITC is distributed pro rata to such recipients in the ratio of turnover of the recipient in a State/ Union Territory to the aggregate turnover of all the recipients to whom the input service is attributable and which are operational during the current year.
 - (vi) ITC pertaining to input services which are common for all units, is distributed to all the recipients in the ratio of turnover in the prescribed manner.
 - (vii) ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in the prescribed form.
 - (viii) Both ineligible and eligible ITC are to be distributed separately.
 - (ix) ITC of CGST, SGST/UTGST and IGST are to be distributed separately.
 - (x) ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.
 - (xi) ITC of CGST and SGST/UTGST, in respect of a recipient located in a different State/Union territory, is distributed as IGST (total of ITC of CGST and SGST/UTGST which were to be distributed to such recipient).
 - (xii) ITC on account of IGST is distributed as IGST.
8. (i) Section 17(5)(c) blocks input tax credit in respect of works contract services when supplied for construction of an immovable property

(other than plant and machinery) except where it is an input service for further supply of works contract service.

Further, the term “plant and machinery” means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and/or services **and includes such foundation or structural support** but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, in view of the above-mentioned provisions, ITC is available in respect of works contract service availed by MBF Ltd. as the same is used for construction of plant and machinery which is not blocked under section 17(5)(c). It is assumed that the expenditure incurred towards works contract service is capitalised in the books of MBF Ltd. and no depreciation has been claimed on the tax component.

- (ii) Section 17(5)(d) blocks ITC on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) **on his own account** including when such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use notwithstanding the fact that the immovable property being constructed will be used in the course or furtherance of his business.

In the given case, Shah & Constructions has used the goods and services for construction of immovable property for some other person and not on its own account. Hence, ITC in this case will be allowed.

- (iii) On a conjoint reading of section 17(5)(a) and 17(5)(ab), it can be concluded that ITC is allowed on repair and maintenance services relating to motor vehicles, which are eligible for input tax credit. Further, as per section 17(5)(a) ITC is allowed on motor vehicles which are used for transportation of goods.

Thus, ITC on maintenance & repair services availed from “Jaggi Motors” for a truck used for transporting its finished goods is allowed to ABC Ltd.

9. As per section 18(6), if capital goods/ plant and machinery on which ITC has been taken are supplied (outward) by a registered person, he must pay an amount that is higher of the following:
- ITC taken on such goods reduced by 5% per quarter or part thereof from the date of issue of invoice for such goods or
 - tax on transaction value of such outward supply determined under section 15.

Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal shall be computed as follows:

Particulars	Amount (₹)
ITC taken on the machinery (₹ 12,39,000 × 18/118)	1,89,000
Less: Input tax credit to be reversed @ 5% per quarter for the period of use of machine	
(i) For the previous year = (₹ 1,89,000 × 5%) × 3 quarters	28,350
(ii) For the current year = (₹ 1,89,000 × 5%) × 2 quarters	<u>18,900</u>
Amount required to be paid by adding the reversal amount to the output tax liability) (A) **	1,41,750
Duty leviable on transaction value (₹ 7,50,000 × 18%) (B)	1,35,000
Amount payable towards disposal of machine is higher of (A) and (B)	1,41,750
Thus, M/s Agarwal & Agarwal is required to pay an amount of ₹ 1,41,750 at the time of sale of machinery by adding the same to the output tax liability.	

** In the above solution, amount payable towards disposal of machine has been computed on the basis of rule 40(2), i.e. ITC to be reversed for the period of use of capital goods/machine has been computed @ 5% for every quarter or part thereof from the date of the issue of invoice.

However, the said amount can also be computed in accordance with rule 44(6), i.e. ITC involved in the remaining useful life (in months) of the capital goods/ machine can be reversed on *pro-rata* basis, taking the useful life as 5 years.

10. As per section 16(1), every registered person can take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. However, section 17(5) specifies certain goods and services on which the input tax credit is not available.

In the light of the foregoing provisions, the availability of ITC in respect of the various expenses incurred by Krishna Motors is discussed below:

- (i) Section 17(5)(a) specifically blocks ITC on motor vehicles for transportation of passengers having approved seating capacity of not more than thirteen persons. However, the same is allowed when the motor vehicles are used, *inter alia*, for further supply of such vehicles. Thus, ITC on cars purchased from the manufacturer for making further supply of such cars will be allowed.

However, ITC on the cars fully destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h).

- (ii) Section 17(5)(c) specifically blocks ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Since, in this case the car parking shed is not a plant and machinery but a civil structure (excluded from "plant and machinery") and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed.

11. **Computation of ITC credited to Electronic Credit Ledger and amount of ITC to be added to the output tax liability for the month of September**

Particulars	ITC (₹)
Capital goods used exclusively for taxable supply	2,000

[Since used exclusively for taxable supply, full ITC is available under rule 43(1)(b)]	
Capital goods used exclusively for exempt supply [Since used exclusively for exempt supply, ITC is not available under rule 43(1)(a)]	Nil
Capital goods used for both taxable and exempt supply - Common credit (T_c) [Commonly used for taxable and exempt supplies – Rule 43(1)(c)]	4200
Total ITC credited to Electronic Credit Ledger for the month of September	6,200
Common credit for the month of September (T_m) $= T_c \div 60 = 4,200 \div 60$ [Rule 43(1)(e)]	70
Common credit attributable to exempt supplies in a month (T_e) $= (E \div F) \times T_r^*$ where, 'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g)] $= (40,000/1,10,000) \times ₹ 70$ (rounded off)	25.45
Amount to be added to the output tax liability for the month of September [Rule 43(1)(h)]	25.45

*Note: *Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020 clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "T_r" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to exempt supply, value of 'T_m' has been used here.*

It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'T_r' was the aggregate of 'T_m'.

12. Computation of ITC available and net GST payable from Electronic Cash Ledger for the month of June

Particulars		Amount (₹)
GST on taxable turnover for the month of June [₹ 60,00,000 × 18%]		10,80,000
Less: ITC available for June month in terms of rule 42		
Opening balance of ITC available in the Electronic Credit Ledger	₹ 1,60,000	
Add: ITC credited to the Electronic Credit Ledger for the month of June [Refer working note below]	₹ 40,000	
Less: ITC out of common credit attributable to exempt supply [Refer working note below]	(₹ 1,290)	<u>1,98,710</u>
Net GST payable from Electronic Cash Ledger		8,81,290

Working Note:

Computation of ITC (out of common credit) attributable to exempt supplies

Particulars	Amount (₹)
Input tax on raw materials [Note1]	40,000
Input tax on catering for housewarming [Note 2]	Nil
Input tax on inputs contained in exempt supplies [Note 3]	Nil
Input tax on cosmetic and plastic surgery of CEO of company [Note 4]	Nil
ITC credited to the Electronic Credit Ledger in terms of rule 42 in the month of June	40,000

Common credit [Note 5]	40,000
ITC attributable towards exempt supplies to be reversed [Note 6]	1,290

Notes:

- (1) Being used in the course or furtherance of business, input tax on raw materials is available as ITC and is credited to the Electronic Credit Ledger [Section 16(1)].
- (2) ITC on outdoor catering is blocked in terms of section 17(5) if the same is not used for making an outward supply of outdoor catering or as an element of a taxable composite/mixed supply. Hence, the same is not credited to the Electronic Credit Ledger [Rule 42].
- (3) Input tax on inputs used exclusively for making exempt supplies is not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42.
- (4) ITC on cosmetic and plastic surgery is blocked in terms of section 17(5) if the same are not used for making the same category of outward supply or as an element of a taxable composite/ mixed supply. Hence, the same is not credited to the Electronic Credit Ledger [Rule 42].
- (5) Since there are no inputs and input services which are used exclusively for effecting taxable supplies, the entire ITC credited to Electronic Credit Ledger, i.e. ₹ 40,000 will be the common credit [Rule 42].
- (6) ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period / Total turnover in the State during the tax period)

$$= ₹ 40,000 \times ₹ 2,00,000 / ₹ 62,00,000 - (\text{rounded off})$$

$$= ₹ 1,290 (\text{rounded off})$$

13. As per section 20 read with rule 39:

- (i) Total GST credit (CGST+ SGST + IGST) of ₹ 18,000 specifically attributable to Ganganagar Branch, Rajasthan will be distributed as IGST credit of ₹ 18,000 only to Ganganagar Branch, Rajasthan [Since recipient and ISD are located in different states].

- (ii) IGST credit of ₹ 1,50,000, CGST credit of ₹ 15,000 and SGST credit of ₹ 15,000 specifically attributable to Mumbai Branch, Maharashtra will be distributed as IGST credit of ₹ 1,50,000, CGST credit of ₹ 15,000 and SGST credit of ₹ 15,000 respectively, only to Mumbai Branch, Maharashtra [Since recipient is located in the same State in which ISD is located].
- (iii) CGST credit of ₹ 60,000, SGST credit of ₹ 60,000 and IGST credit of ₹ 1,20,000 have to be distributed among the three branches and Mumbai Branch, Maharashtra in proportion of their turnover of the last quarter.
- Ganganagar Branch, Rajasthan will get: ₹ 48,000 [$₹ 2,40,000 \times (\frac{₹ 10,00,000}{₹ 50,00,000})$] as IGST credit.
 - Madhugiri Branch, Karnataka will get: ₹ 24,000 [$₹ 2,40,000 \times (\frac{₹ 5,00,000}{₹ 50,00,000})$] as IGST credit.
 - The credit attributable to a recipient is distributed even if such recipient is making exempt supplies.
 - Kosala Branch, UP will get: ₹ 72,000 [$₹ 2,40,000 \times (\frac{₹ 15,00,000}{₹ 50,00,000})$] as IGST credit.
 - Mumbai Branch, Maharashtra will get:
₹ 24,000 [$₹ 60,000 \times (\frac{₹ 20,00,000}{₹ 50,00,000})$] as CGST credit,
₹ 24,000 [$₹ 60,000 \times (\frac{₹ 20,00,000}{₹ 50,00,000})$] as SGST credit and
₹ 48,000 [$₹ 1,20,000 \times (\frac{₹ 20,00,000}{₹ 50,00,000})$] as IGST credit.
- (iv) ITC of ₹ 10,000 of March (last year) cannot be distributed in March this year as ITC available for distribution in a month is to be distributed in the same month.

14. Computation of net CGST, SGST and IGST payable from the electronic cash ledger by George Pvt. Ltd. for the tax period

Particulars	Amount (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Sales made outside Kerala (New Delhi) – [Being inter-State sale, the same is liable to IGST]	10,00,000			1,80,000
Sales made in Trivandrum [Being intra-State sale, the same is liable to CGST & SGST]	8,00,000	72,000	72,000	
Less: ITC available during the tax period for set off [Refer Working Note Below]		(72,000) CGST	(10,000) IGST	(1,80,000)
			(52,500) SGST	
Net tax liability payable in cash		Nil	9,500	Nil
ITC to be carried forward to next tax period		500 (72,500-72,000)	Nil (52,500-52,500)	Nil (1,90,000-1,90,000)
Working Note:				
ITC available during the tax period is computed as under:				
Opening balance of ITC		50,000	30,000	1,00,000
Purchases from New Delhi [Being inter-State purchase, IGST would have been paid on it.]	5,00,000			90,000
Purchases from Trivandrum	2,50,000	22,500	22,500	
Total input tax credit		72,500	52,500	1,90,000

Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross-utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) as credit of CGST and SGST can be utilized only after IGST credit has been fully utilized.

15. Computation of net GST payable from Electronic Cash Ledger by Quanto Enterprises for the month of September

Particulars	CGST (Rs)	SGST (Rs)
Output tax liability for the month	24,000	24,000
Less: ITC [Notes 1 & 2]	9,000 (IGST)	12,000_(SGST)
	12,000 (CGST)	
Net GST payable (from electronic cash ledger)	3,000	12,000

Notes:

1. Credit of IGST is first utilized towards payment of IGST and thereafter for CGST and SGST in any order and in any proportion. Credit of CGST and SGST can be utilized only after IGST credit has been fully utilized [Rule 88A read with sections 49(5), 49A and 49B].

Since Quanto Enterprises does not make any inter-State supply, in the above answer, entire credit of IGST has been utilized towards payment of CGST. Credit of IGST can also be utilised against SGST liability or against both CGST and SGST liabilities in any proportion and thus, the final answer will change accordingly.

2. As per section 18(1)(b) a person who takes voluntary registration is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished/ finished goods held in stock on the day immediately preceding the date of grant of registration.

However, he cannot take ITC in respect of capital goods held on the day immediately preceding the date of grant of registration.

ITC on inputs needs to be availed within 1 year from the date of issue of the invoice by the supplier [Section 18(2)].

In this case, since Quanto Enterprises has been granted voluntary registration on 25th September, it will be entitled to ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock, on 24th September. In view of the said provisions, eligible ITC for Quanto Enterprises is computed as follows:

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Inputs held in stock since 2 nd September	4,500	4,500	
Inputs received on 21 st July contained in semi-finished goods held in stock	7,500	7,500	
Inputs contained in finished goods held in stock which were procured on 19 th September last year [Invoice issued prior to one year, hence ITC cannot be availed]			Nil
Inputs held in stock since 13 th September			9,000
Capital goods procured on 12 th September	Nil	Nil	
Total ITC	12,000	12,000	9,000

16. As per section 10(3) read with *Notification No.14/2019 CT dated 07.03.2019* as amended, the option availed of by a registered person to pay tax under composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ₹ 1.5 crore [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir].

As per section 2(6), aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same

PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1.5 crore on 3rd October [aggregate of both taxable and exempt turnover from 1st April to 3rd October, i.e. ₹ 1,50,05,000 (₹ 1,44,65,000 + ₹ 2,03,000 + ₹ 1,38,250 + ₹ 1,06,250 + ₹92,500)].

Thus, the firm will pay tax under regular scheme (Section 9) from 3rd October.

As per section 18(1)(c) read with rule 40, where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

Further, ITC on supplies of inputs and capital goods shall not be available after the expiry of one year from the date of issue of tax invoice [Section 18(2)].

In the light of the above-mentioned provisions, the ITC credited to the Electronic Credit Ledger of the B & D Company on inputs held in on **2nd October** will be computed as under:

Particulars	Amount (₹)
Stock of taxable inputs as on 30 th September [Since no tax is paid on exempt purchases, there does not arise any question of availing ITC on the same. Hence, stock of only taxable inputs is considered]	10,00,000
<i>Add:</i> Purchases [No purchases are made in October]	Nil
<i>Less:</i> Cost of taxable goods sold from 1 st October to 2 nd October [(2,00,000 + 1,33,000 + 67,000) x 80%]	<u>3,20,000</u>
Stock of taxable inputs as on 2 nd October [Since the bill numbers are in continuation, it can be concluded that no sales are missing from the extract]	6,80,000

Less: Stock with invoice issued prior to one year		3,00,000
Stock of inputs on which ITC can be claimed		3,80,000
ITC of CGST @ 9%	[Since all purchases are intra-State and from the suppliers registered under regular scheme]	34,200
ITC of SGST @ 9%		34,200

17.

S. No.	Particulars	ITC (₹)
(i)	Amount of ITC credited to Electronic Credit Ledger, for the month of October	
	Machinery 'U' - 'A' [Note 1]	36,000
	Machinery 'V' [Note 2]	18,000
	Machinery 'W' [Note 3]	-
	Machinery 'Y' [Note 4]	-
	Machinery 'Z' [Note 5]	-
	Raw Material used for manufacturing 'Alpha' [Note 6]	27,000
	Raw Material used for manufacturing 'Beta' [Note 6]	-
	Raw Material used for manufacturing 'Gama' [Note 6]	18,000
	Amount of ITC credited to Electronic Credit Ledger, for the month of October	99,000
(ii)	Aggregate value of common credit (T_c) – Note 7	
	Value of 'A' for Machinery 'U' purchased on 1 st October	36,000
	Value of 'A' for Machinery 'Z' purchased on 1 st October 2 years ago for effecting both taxable and exempt supplies	54,000

	Input tax claimed on Machinery 'Y' purchased on 1 st October 4 years ago for effecting taxable supplies but used for effecting both taxable and exempt supplies from 1 st October in the current year [Note 8]	<u>72,000</u>
	Aggregate value of common credit (T_c)	1,62,000
(iii)	Common credit attributable to exempt supplies, for the month of October	
	Common credit for the month of October (T _m) [Note 9]	2,700
	Common credit attributable to exempt supplies, for the month of October (T_e) – Note 10	1,080
(iv)	Computation of GST liability of the company for October payable through Electronic Cash Ledger	
	IGST payable on 'Alpha' [₹ 9,00,000 x 18%]	1,62,000
	IGST payable on 'Beta' [Exempt]	Nil
	IGST payable on 'Gama' [₹ 6,00,000 x 18%]	<u>1,08,000</u>
	Total IGST payable on outward supply	2,70,000
	Common credit attributable to exempt supplies for the month of October [Note 11]	<u>1,080</u>
	Total output tax liability of October	2,71,080
	Less: ITC available in the Electronic Credit Ledger	<u>99,000</u>
	IGST payable from Electronic Cash Ledger	1,72,080

Notes:

- (1) ITC in respect of capital goods used commonly for effecting taxable supplies and exempt supplies denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c)].
- (2) ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b)].
- (3) ITC in respect of capital goods used or intended to be used exclusively for effecting exempt supplies shall not be credited to electronic credit ledger [Rule 43(1)(a)].
- (4) Machinery 'Y' is being used for effecting both taxable and exempt supplies from 1st October. Prior to that it was exclusively used for effecting taxable supplies. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (5) Machinery 'Z' is being used for effecting both taxable and exempt supplies from 1st October two years ago. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (6) ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger. ITC in respect of inputs used for effecting exempt supplies will not be credited in the electronic credit ledger [Rule 42].
- (7) The aggregate of the amounts of 'A' credited to the electronic credit ledger in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods [Rule 43(1)(d)].
- (8) Where any capital goods which were used exclusively for effecting taxable supplies are subsequently also used for effecting exempt supplies, the ITC claimed in respect of such capital goods shall be added to arrive at the aggregate value of common credit 'Tc' [Proviso to rule 43(1)(d)].

- (9) ITC attributable to a month on common capital goods during their useful life (T_m) shall be computed in accordance with rule 43(1)(e) as under:

$$= T_c \div 60$$

$$= ₹ 1,62,000 \div 60$$

$$= ₹ 2,700$$

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods

- (10) The amount of common credit attributable towards exempted supplies, be denoted as ' T_e ', and shall be calculated as:

$$T_e = (E \div F) \times T_r \text{ where,}$$

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g)].

$$= T_r \times \frac{\text{Turnover of exempt supplies during the month of October}}{\text{Total turnover of XYZ Pvt. Ltd. during the month of October}}$$

$$= ₹ 2,700 \times \frac{10,00,000}{25,00,000} = ₹ 1,080$$

- (11) Common credit attributable to the exempt supplies (T_e) along with the applicable interest (which is to be ignored in this case) shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit [Rule 43(1)(h)].

**Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020 clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as ' T_r ' and shall be the aggregate of ' T_m ' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term " T_r " becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable*

to exempt supply, value of ' T_m ' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of ' T_r ' was the aggregate of ' T_m '

18. A. Computation of ITC credited to Electronic Credit Ledger

As per rule 42, the ITC in respect of inputs or input services being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

ITC credited to the electronic credit ledger of registered person ['C₁'] is calculated as under-

$$C_1 = T - (T_1 + T_2 + T_3)$$

Where,

- T** = Total input tax involved on inputs and input services in a tax period.
- T₁** = Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes
- T₂** = Input tax attributable to inputs and input services intended to be used exclusively for effecting exempt supplies
- T₃** = Input tax in respect of inputs and input services on which credit is blocked under section 17(5)

Computation of total input tax involved [T]

Particulars	(₹)
GST paid on taxable items [₹ 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items - [₹ 1,00,000 x 5%]	5,000

GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items - [₹ 80,000 x 5%]	4,000
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items - [₹ 20,000 x 5%]	1,000
GST paid on monthly rent - [₹ 5,50,000 x 18%]	99,000
GST paid on packing charges [₹ 2,50,000 x 18%]	45,000
Salary paid to staff at the Store [Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III and hence, no GST is payable thereon].	Nil
GST paid on inputs used for personal purpose	5,000
GST paid on rent a cab services availed for business purpose	4,000
GST paid on items given as free samples	4,000
Total input tax involved during the month [T]	11,57,000

Computation of T₁, T₂, T₃

Particulars	(₹)
GST paid on monthly rent attributable to personal purposes [1/3 of ₹ 99,000]	33,000
GST paid on inputs used for personal purpose	<u>5,000</u>
Input tax exclusively attributable to non-business purposes [T₁]	<u>38,000</u>
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items	4,000

[As per section 2(47), exempt supply means, <i>inter alia</i> , supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of inward transportation of exempt items is exclusively used for effecting exempt supplies.]	
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items [Exempt supply includes non-taxable supply in terms of section 2(47). Hence, input service of inward transportation of non-taxable items is exclusively used for effecting exempt supplies.]	<u>1,000</u>
Input tax exclusively attributable to exempt supplies [T₂]	<u>5,000</u>
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply.]	4,000
GST paid on items given as free samples [ITC on goods <i>inter alia</i> , disposed of by way of free samples is blocked under section 17(5)(h)].	<u>4,000</u>
Input tax for which credit is blocked under section 17(5) [T₃] **	<u>8,000</u>

**Since GST paid on inputs used for personal purposes has been considered while computing T₁, the same has not been considered again in computing T₃.

ITC credited to the electronic credit ledger

$$C_1 = T - (T_1 + T_2 + T_3)$$

$$= ₹ 11,57,000 - (₹ 38,000 + ₹ 5,000 + ₹ 8,000) = ₹ 11,06,000$$

B. Computation of Common Credit

$$C_2 = C_1 - T_4$$

where C_2 = Common Credit

T_4 = Input tax credit attributable to inputs and input services intended to be used exclusively for effecting taxable supplies

Computation of T_4

Particulars	(₹)
GST paid on taxable items	9,90,000
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items	5,000
Input tax exclusively attributable to taxable supplies [T_4]	<u>9,95,000</u>

Common Credit $C_2 = C_1 - T_4$

$$= ₹ 11,06,000 - ₹ 9,95,000 = ₹ 1,11,000$$

C. Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies is denoted as ' D_1 ' and calculated as-

$$D_1 = (E \div F) \times C_2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period

Aggregate value of exempt supplies during the month

$$= ₹ 15,00,000 (₹ 12,00,000 + ₹ 3,00,000)$$

Total turnover in the State during the tax period

$$= ₹ 65,00,000 (₹ 42,00,000 + ₹ 12,00,000 + ₹ 3,00,000 + ₹ 8,00,000)$$

Note: Transfer of items to Store located in Goa is inter-State supply in terms of section 7 of the IGST Act, 2017 and hence includible in the total turnover. Such supply is to be valued as per rule 28. However, the value declared in the invoice cannot be adopted as the value since the recipient Store at Goa is not entitled for full credit because the goods are to be distributed as free samples, ITC on which is blocked. Therefore, open market value of such goods, which is the value of such goods sold in Mumbai Store, is taken as the value of items transferred to Goa Store.

$$D_1 = (15,00,000 \div 65,00,000) \times 1,11,000$$

$$= ₹ 25,615 \text{ (rounded off)}$$

D. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C₃', where-

$$C_3 = C_2 - D_1$$

$$= ₹ 1,11,000 - ₹ 25,615$$

$$= ₹ 85,385$$

E. Computation of Net GST liability for the month

Particulars	GST (₹)
<i>GST liability under forward charge</i>	
Taxable items sold in the store [₹ 42,00,000 x 18%]	7,56,000
Taxable items transferred to Goa Store [₹ 8,00,000 x 18%]	1,44,000
Total output tax liability under forward charge	9,00,000
<i>Less: ITC credited to the electronic ledger</i>	10,80,385
ITC carried forward to the next month	(1,80,385)
Net GST payable [A]	Nil
<i>GST liability under reverse charge</i>	

Freight paid to GTA for inward transportation of taxable items [₹ 1,00,000 x 5%]	5,000
Freight paid to GTA for inward transportation of exempted items [₹ 80,000 x 5%]	4,000
Freight paid to GTA for inward transportation of non-taxable items [₹ 20,000 x 5%]	1,000
Total tax liability under reverse charge [B]	10,000
Net GST liability to be paid in cash [A] + [B] As per section 49(4), amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, tax payable under reverse charge cannot be set off against the ITC and thus, will have to be paid in cash.	10,000

Note: While computing net GST liability, ITC credited to the electronic ledger can alternatively be computed as follows:

Particulars	(₹)
GST paid on taxable items [₹ 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items [₹ 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items [₹ 80,000 x 5%]	Nil

[As per section 2(47), exempt supply means, <i>inter alia</i> , supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of inward transportation of exempt items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items [₹ 20,000 x 5%] [Exempt supply includes non-taxable supply in terms of section 2(47). Hence, input service of inward transportation of non-taxable items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	Nil
GST paid on monthly rent – for business purposes [(₹ 5,50,000 x 18%) – 1/3 of [(₹ 5,50,000 x 18%)]]	66,000
GST paid on packing charges [₹ 2,50,000 x 18%]	45,000
Salary paid to staff at the Store [Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III to CGST Act and hence, no GST is payable thereon]	Nil
GST paid on inputs used for personal purpose [ITC on goods or services or both used for personal consumption is blocked under section 17(5)(g)]	Nil
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) as the same is not used by All-in-One Store]	Nil

for providing the rent a cab service or as part of a taxable composite or mixed supply.]	
GST paid on items given as free samples [ITC on goods <i>inter alia</i> , disposed of by way of free samples is blocked under section 17(5)(h)]	Nil
Total ITC credited to the electronic ledger	11,06,000
Less: ITC reversal [ITC of common credit, attributable to exempt supplies]	(25,615)
Net ITC available for credit	10,80,385

19. (1) Computation of ITC credited to Electronic Credit Ledger

ITC of input tax attributable to inputs and input services intended to be used for business purposes is credited to the electronic credit ledger. Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes, for effecting exclusively exempt supplies and on which credit is blocked under section 17(5) is not credited to electronic credit ledger [Sections 16 and 17].

In the light of the aforementioned provisions, the ITC credited to electronic credit ledger of Vansh Shoppe is calculated as under:

Particulars	Amount (₹)	CGST @ 6% (₹)	SGST @ 6% (₹)
GST paid on taxable goods	45,00,000	2,70,000	2,70,000
Goods not leviable to GST [Since non-taxable, no GST is paid]	4,00,000	Nil	Nil
GST paid on monthly rent for shop	3,50,000	21,000	21,000
GST paid on telephone expenses	50,000	3,000	3,000
GST paid on audit fees	60,000	3,600	3,600

GST paid on premium of health insurance policies as per company policy [ITC on health insurance service is allowed only if it is obligatory for employers to provide such services to its employees under any law for the time being in force-Proviso to section 17(5)(b)].	10,000	Nil	Nil
Taxable Goods given as free samples [ITC on goods disposed of by way of free samples is blocked under section 17(5)(h)]	5,000	Nil	Nil

Particulars	Amount (₹)	CGST @ 2.5% (₹)	SGST @ 2.5% (₹)
Freight paid to GTA for inward transportation of non-taxable goods under reverse charge [Since definition of exempt supply under section 2(47) specifically includes non-taxable supply, the input service of inward transportation of non-taxable goods is being exclusively used for effecting exempt supplies.]	50,000	Nil	Nil
Freight paid to GTA for inward transportation of taxable goods under reverse charge	1,50,000	3,750	3,750
ITC credited to the electronic ledger		3,01,350	3,01,350

Less: ITC reversal [ITC out of common credit, attributable to exempt supplies] (Refer point no. 2 & 3 below)		(4,600)	(4,600)
Net ITC available		2,96,750	2,96,750

(2) Computation of common credit available for apportionment

Common Credit = ITC credited to Electronic Credit Ledger – ITC attributable to inputs and input services intended to be used exclusively for effecting taxable supplies [Section 17 read with rule 42].

Particulars	CGST (₹)	SGST (₹)
ITC credited to Electronic Credit Ledger	3,01,350	3,01,350
Less : ITC on taxable goods	2,70,000	2,70,000
Less: ITC on freight paid to GTA for inward transportation of taxable goods	3,750	3,750
Common credit	27,600	27,600

(3) Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period/ Total turnover during the tax period)[Section 17 read with rule 42].

Particulars	CGST (₹)	SGST (₹)
ITC attributable towards exempt supplies [₹ 27,600 x (₹ 10,00,000/₹ 60,00,000)]	4,600	4,600

(4) Computation of net GST liability for the month

Particulars	CGST (₹)	SGST (₹)
<i>GST liability under forward charge</i>		

Supply of taxable goods [₹ 50,00,000 x 6%]	3,00,000	3,00,000
Total output tax liability under forward charge	3,00,000	3,00,000
Less: ITC	2,96,750	2,96,750
Net GST payable [A]	3,250	3,250
<i>GST liability under reverse charge</i>		
Freight paid to GTA for inward transportation of taxable goods [₹ 1,50,000 x 2.5%]	3,750	3,750
Freight paid to GTA for inward transportation of non-taxable goods [₹ 50,000 x 2.5%]	1,250	1,250
Total tax liability under reverse charge [B]	5,000	5,000
Net GST liability [A] + [B]	8,250	8,250
<p>Note: Amount available in the electronic credit ledger may be used for making payment towards output tax [Section 49]. However, tax payable under reverse charge is not an output tax in terms of definition of output tax provided under section 2(82). Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.</p>		

20. Computation of net GST liability of Surana & Sons for the tax period

Particulars	(₹)
GST payable on outward supply [Refer Working Note 1]	3,18,000
Less: Input tax credit (ITC) [Refer Working Note 3]	2,78,180
GST payable from Electronic Cash Ledger [A]	39,820

<p><i>Add:</i> GST payable on legal services under reverse charge [₹ 3,50,000 X 18%] [B]</p> <p>[Tax on legal services provided by an advocate to a business entity, is payable under reverse charge by the business entity in terms of <i>Notification No. 13/2017 CT (R) dated 28.06.2017</i>. Further, such services are not eligible for exemption provided under <i>Notification No. 12/2017 CT (R) dated 28.06.2017</i> as the turnover of the business entity (Surana & Sons) in the preceding financial year exceeds ₹ 20 lakh.]</p>	63,000
<p>Total GST paid from Electronic Cash Ledger [A] + [B]</p> <p>[As per section 49(4) amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, input tax credit cannot be used to pay tax payable under reverse charge and thus, tax payable under reverse charge will have to be paid in cash.]</p>	1,02,820

Working Note 1**Computation of GST payable on outward supply**

Particulars	Value (₹)	GST (₹)
Turnover of 'M' [liable to GST @ 12%]	14,00,000	1,68,000
Turnover of 'N' [Tax on 'N' is payable under reverse charge by the recipient of such goods]	6,00,000	Nil
Turnover of 'O' [liable to GST @ 12%]	10,00,000	1,20,000
Export of 'M' with payment of IGST @ 12%	2,50,000	30,000
Export of 'O' under letter of undertaking (LUT) [Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of	10,00,000	Nil

tax under a LUT in terms of section 16(3)(a) of that Act.]		
<p>Consultancy services provided to independent clients located in foreign countries.</p> <p>[The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as-</p> <ul style="list-style-type: none"> • the supplier of service is located in India; • the recipient of service is located outside India; • place of supply of service is outside India (in terms of section 13(2) of the IGST Act, 2017); • payment for the service has been received in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and • supplier of service and recipient of service are not merely establishments of distinct person. <p>[Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]</p> <p>It is assumed that export has been made under LUT</p>	20,00,000	Nil
<p>Sale of building</p> <p>[Sale of building is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, provided the entire consideration has been received after issue of completion certificate by the competent authority or after its occupation, whichever is earlier. Hence, the same is not liable to GST]</p>	1,20,00,000	Nil
Interest received on investment in fixed deposits with a bank	4,00,000	Nil

[Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]		
Sale of shares [Shares are neither goods nor services in terms of section 2(52) and 2(102). Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]	2,50,00,000	Nil
Total GST payable on outward supply		3,18,000

Working Note 2**Computation of common credit attributable to exempt supplies during the tax period**

Particulars	(₹)
Common credit on inputs and input services [Tax on inputs - ₹ 4,20,000 (₹ 35,00,000 x 12%) + Tax on input services - ₹ 2,70,000 (₹ 15,00,000 x 18%)]	6,90,000
Common credit attributable to exempt supplies (rounded off) = Common credit on inputs and input services x (Exempt turnover during the period / Total turnover during the period) = ₹ 6,90,000 x ₹ 1,33,50,000 / ₹ 1,94,00,000 Exempt turnover = ₹ 1,33,50,000 and total turnover = ₹ 1,94,00,000 [Refer note below]	4,74,820

Note:

As per section 17(3), value of exempt supply includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. As per explanation to Chapter V of the CGST Rules, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Further, as per explanation to rule 42, the aggregate value of exempt supplies *inter alia* excludes the value of services by way of accepting deposits,

extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.

Therefore, value of exempt supply in the given case will be the sum of value of output supply on which tax is payable under reverse charge (₹ 6,00,000), value of sale of building (₹ 2,50,000 / 2 x 100 = ₹ 1,25,00,000) and value of sale of shares (1% of ₹ 2,50,00,000 = ₹ 2,50,000), which comes out to be ₹ 1,33,50,000.

Total turnover = ₹ 1,94,00,000 (₹ 14,00,000 + ₹ 6,00,000 + ₹ 10,00,000 + ₹ 2,50,000 + ₹ 10,00,000 + ₹ 20,00,000 + ₹ 1,25,00,000 + ₹ 4,00,000 + ₹ 2,50,000)

Working Note 3

Computation of ITC available in the Electronic Credit Ledger of the Surana & Sons for the tax period

Particulars	(₹)
Common credit on inputs and input services	6,90,000
Legal services used in the manufacture of taxable product 'M'	63,000
ITC available in the Electronic Credit Ledger	7,53,000
Less: Common credit attributable to exempt supplies during the tax period [Refer Working Note 2]	4,74,820
Net ITC available	2,78,180

21. Computation of net GST payable by M/s XYZ

Particulars	GST payable (₹)
Gross GST liability [Refer Working Note 1 below]	2,63,400
Less: ITC [Refer Working Note 2 below]	2,00,000
Net GST payable from Electronic Cash Ledger	63,400

Working Notes**(1) Computation of gross GST liability**

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
Gross GST liability			2,63,400

Notes:

- (i) Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators (ancillary supply) will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

- (ii) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

(2) **Computation of ITC available for set off**

Particulars	GST paid (₹)	ITC available (₹)
Maintenance services for excavators [Refer Note 1]	1,00,000	1,00,000
Health insurance for excavator operators [Refer Note 2]	11,000	-
Scientific and technical consultancy [Refer Note 1]	1,00,000	1,00,000
Total ITC available		2,00,000

Notes:

- (i) Section 17(5)(d) blocks credit on goods/ or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s. XYZ on its own account for construction of immovable property instead they are used for outward taxable supply of hiring out of machinery. Further, excavators are special purpose vehicles whose credit is not restricted under section 17(5)(a), therefore, ITC on maintenance service for excavators shall be allowed.

Therefore, the maintenance service for the excavators does not get covered by the bar under section 17 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.

- (ii) Section 17(5)(b)(i) allows input tax credit on health insurance only where an inward supply of such services is used by a registered person for making an outward taxable supply of the same

category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the given case, it is assumed that it is not obligatory for employer to provide health insurance to its employees under any law for the time being in force, therefore the credit thereon will not be allowed.

22. Computation of ITC available with V-Supply Pvt. Ltd. for the tax period

S. No.	Particulars	ITC			
		CGST* ₹	SGST* ₹	IGST* ₹	Total ₹
1.	Opening balance of ITC	15,000	8,000	9,000	32,000
2.	Raw Material				
	Raw material purchased from Bihar [Refer Note 1(i)]			14,400	14,400
	Raw material imported from China [Refer Note 1(ii)]			29,970	29,970
	Raw material purchased from unregistered suppliers within West Bengal [Refer Note 1(iii)]	Nil	Nil		Nil
	Raw material destroyed due to seepage [Refer Note 1(iv)]	Nil	Nil		Nil
	Remaining raw material purchased from West Bengal [Refer Note 1(i)]	7,650	7,650		15,300

	[₹ 3.5 - ₹ 1.5 - ₹ 0.80 - ₹ 0.30 - ₹ 0.05] = ₹ 0.85]				
	Total ITC for raw material	7,650	7,650	44,370	59,670
3.	Consumables [Refer Note 2]	9,000	9,000		18,000
4.	Transportation charges for bringing the raw material to factory [Refer Note 3]	1,500	1,500		3,000
5.	Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
6.	Premium paid on life insurance policies taken for specified employees [Refer Note 5]	14,400	14,400	-	28,800
7.	Audit fee [Refer Note 6]	4,500	4,500	-	9,000
8.	Telephone expenses [Refer Note 6]	2,700	2,700		5,400
9.	Bank charges [Refer Note 6]	900	900		1,800
	Total ITC available for the tax period	55,650	48,650	53,370	1,57,670

Computation of net GST payable

Particulars	CGST* ₹	SGST* ₹	IGST* ₹	Total ₹
On Intra-state sales in West Bengal	63,000	63,000		1,26,000
On Inter-state sales other than West Bengal			54,000	54,000

On exports under LUT [Note 7]	Nil	Nil	Nil	Nil
Total output tax liability	63,000	63,000	54,000	1,80,000
Less: ITC available for being set off [Note 8 and Note 9]	(55,650)	(48,650)	(53,370)	(1,57,670)
Net GST payable from Electronic Cash Ledger [A]	7,350	14,350	630	22,330
GST payable on inward supply of GTA services under reverse charge through Electronic Cash Ledger [Note 3 and 10] [B]	1,500	1,500		3,000
Net GST payable through Electronic Cash Ledger [A] + [B]	8,850	15,850	630	25,330

Notes:

- (1) (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16(1).
 - (ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62)(a). Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16(1).
 - (iii) Tax on intra-State procurements made by a registered person from an unregistered supplier is levied only on notified categories of goods and services. [Section 9(4)].
 - (iv) ITC is not available on destroyed inputs in terms of section 17(5)(h).
2. Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of section 16(1). However, levy of CGST on diesel has been deferred till such date

as may be notified by the Government on recommendations of the GST Council [Section 9(2)]. Hence, there being no levy of GST on diesel, there cannot be any ITC.

3. GST is payable under reverse charge on transportation service received from GTA. Tax payable under section 9(3) of the CGST/SGST Act qualifies as input tax in terms of clauses (b) and (d) of section 2(62). Thus, input tax paid under reverse charge on GTA service will be available as ITC in terms of section 16(1) as the said service is used in course or furtherance of business.

Furthermore, intra-State services by way of transportation of goods by road except the services of a GTA and a courier agency are exempt from CGST vide *Notification No. 12/2017 CT (R) dated 28.06.2017*. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with para 1 of Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services
5. ITC on supply of life insurance service is not blocked if it is obligatory for an employer to provide such service to its employees under any law for the time being in force. [Proviso to section 17(5)(b)]. Therefore, GST paid on premium for life insurance policies will be available as ITC in terms of section 16(1) as the said service is used in the course or furtherance of business.
6. Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1).
7. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].
8. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available [Section 16 of the IGST Act read with section 17(2) of the CGST Act].

9. As per section 49(5) read with rule 88A, ITC of-
- (i) IGST is utilised towards payment of IGST first and then CGST and SGST in any proportion and in any order.
 - (ii) CGST is utilised towards payment of CGST and IGST in that order. ITC of CGST shall be utilized only after ITC of IGST has been utilised fully.
 - (iii) SGST is utilised towards payment of SGST and IGST in that order. ITC of SGST shall be utilized only after ITC of IGST has been utilised fully.
10. Section 49(4) lays down that the amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, tax payable under reverse charge cannot be set off against the ITC and thus, will have to be paid in cash.
- *11. CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

23. Computation of net GST payable by ABC Company Ltd.

Particulars	GST payable (₹)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	<u>82,000</u>
Net GST payable from Electronic Cash Ledger	9,200

Working Notes:

(1) Computation of ITC available with ABC Company Ltd.

Particulars	GST (₹)
Health insurance of factory employees [Note – 1]	20,000
Raw material received in factory [Note – 2]	Nil

Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under challan [Note -4]	50,000
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	Nil
Total ITC available	82,000

Notes:

1. ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) since it is obligatory for employer to provide health insurance to its employees under the Factories Act, 1948. -
2. Where the goods against an invoice are received in lots/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2). Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment in next month.
3. Section 17(5)(c) provides that ITC on works contract services is blocked when supplied for construction of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service.

Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.
4. ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) read with rule 45(1).
5. Section 17(5)(a) provides that motor vehicle for transportation of persons having approved seating capacity of not more than 13

persons (including the driver), except when they are used for making taxable supply of-

- (i) further supply of such vehicles,
- (ii) transportation of passengers,
- (iii) imparting training on driving, flying, navigating such vehicles and

Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of passengers or any other use as specified, ITC thereon will not be available.

6. Section 17(5)(b)(i) provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.

Since ABC Company Ltd is a supplier of machine, ITC thereon will not be available.

(2) Computation of gross GST liability

	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
Gross GST liability			91,200

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) read with section 2(90)]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable

for hiring out of machines (principal supply), which is 12%, in terms of section 8(a).

24. Computation of ITC available with Pari Ltd.

S. No.	Particulars	Eligible input tax credit		
		CGST (₹)	SGST (₹)	IGST (₹)
1.	Raw Material			
	Purchased from local registered suppliers [Note 1(i)] (₹ 1,06,250 x 9%)	9,562.50	9,562.50	
	Purchased from local unregistered suppliers [Note 1(ii)]	Nil	Nil	
	Purchased from Punjab from registered supplier [Note 1(i)] (₹ 1,00,000 x 18%)			18,000
	Raw material imported from USA [Note 1(iii)]			22,732
2.	Consumables [Note 2] (₹ 1,56,250- ₹ 31,250) x 9%	11,250	11,250	
3.	Monthly rent for the factory building to the owner in Rajasthan [Note 3]	9,000	9,000	
4.	Salary paid to employees on rolls [Note 4]	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Note 5] (₹ 2,00,000 x 9%)	18,000	18,000	-
Total		47,812.50	47,812.50	40,732

Add: Opening balance of ITC	20,000	15,000	15,000
Total ITC [Note 7]	67,812.50	62,812.50	55,732

Computation of net GST payable

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Intra-State supply	78,750	78,750	
Inter-State supply			67,500
Exports under LUT [Note 6]	Nil	Nil	Nil
Total output tax liability	78,750	78,750	67,500
Less: ITC	67,812.50	62,812.50	55,732
Net GST payable (rounded off)	10,938	15,938	11,768

Notes:

- Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16.
 - Tax on procurements made by a registered person from an unregistered supplier is levied only in case of notified goods and services in terms of section 9(4). Therefore, since no GST is paid on such raw material purchased, there does not arise any question of ITC on such raw material.
 - IGST paid on imported goods qualifies as input tax in terms of section 2(62). Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16.
- ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.
- ITC on monthly rent is available as the said service is used in the course or furtherance of business.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.
5. ITC on life insurance service is available if the same is obligatory for an employer to provide to its employees under any law for the time being in force as per proviso to section 17(5)(b).
6. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT/bond is made without payment of IGST in terms of section 16(3)(a).
7. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2).

25. Computation of net GST payable by Flowchem for the month of July

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Output tax liability [Working Note 1]			1,88,100
Less: ITC of CGST [Working Note 2]			(25,000)
Less: ITC of SGST has been utilized only after ITC of CGST has been utilized fully in terms of proviso to section 49(5)(c) [Working Note 2]			(25,000)
Net GST payable from Electronic Cash Ledger			1,38,100

Working Note 1

Computation of output tax liability of Flowchem for the month of July

Particulars	Amount (₹)
List price of 10 valves (₹ 1,00,000 x 10)	10,00,000
Add: Amount paid by R Refinery to testing agency [Note 1]	15,000
Add: Special packing [Note 2]	10,000

Add: Erection and testing at site [Note 2]	15,000
Add: Freight [Note 3]	5,000
Value of taxable supply	10,45,000
IGST @ 18% [Note 4]	1,88,100

Notes:

- (1) As per section 15(2), any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply charges for the same, however, have been paid directly to the third party service provider by the recipient. Therefore, the value shall be included in taxable value.

- (2) As per section 15(2), any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of supply.
- (3) As per section 15(2), any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.

- (4) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Abu Road (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter-State supply liable to IGST.

Working Note 2**Computation of ITC available with Flowchem for the month of July**

Particulars	CGST (₹)	SGST (₹)
Opening ITC	20,000	20,000
Work contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 1]	5,000	5,000
Laying of pipeline up to the gate of factory from water source located outside the factory [Note 2]	Nil	Nil
Installation of telecommunication towers [Note 2]	Nil	Nil
Services of travel company to provide home travel facility to employees Note 3]	Nil	Nil
Services of fitness center to provide wellness services to employees [Note 3]	Nil	Nil
Total ITC	25,000	25,000

Notes:

- (1) As per section 17(5), ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, is blocked. Further, plant and machinery includes foundation and structural supports used to fix the machinery to earth.
- (2) As per section 17(5), ITC on goods and/ or services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such and/ or services are used in course/ furtherance of business, is blocked. However, plant and machinery excludes pipelines laid outside the factory premises and telecommunication towers.
- (3) As per section 17(5), ITC on travel benefits extended to employees on home travel concession and membership of health and fitness center is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.



TEST YOUR KNOWLEDGE

1. Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of ready-made garments at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.

It has furnished the following details relating to the supply made at such multiple locations for the month of June:-

Particulars	Himachal Pradesh	Uttarakhand	Tripura
	(₹)*	(₹)*	(₹)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Intra-State supply of non-taxable goods	-	21,00,000	40,000

* excluding GST

With the help of the above mentioned information, answer the following questions giving reasons:-

- (1) Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case assuming that it is not required to pay any tax on inward supplies under reverse charge.
- (2) Explain with reasons whether your answer in (1) will change in the following independent cases:
 - (a) If Mahadev Enterprises is dealing exclusively in taxable supply of goods only from Himachal Pradesh;
 - (b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;

- (c) *If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also effected inter-State supplies of taxable goods (other than notified handicraft goods and notified hand-made goods) amounting to ₹4,00,000.*
2. *LMN Pvt. Ltd., Coimbatore, Tamil Nadu, exclusively manufactures and sells product 'X' which is exempt from GST vide a notification issued under relevant GST legislations. The company sells product 'X' only within Tamil Nadu and is not registered under GST. Further, all the inward supply of the company are taxable under forward charge. The turnover of the company in the previous year was ₹45 lakh. The company expects the sales to grow by 30% in the current year. The company purchased additional machinery for manufacturing 'X' on 1st July. The purchase price of the capital goods was ₹30 lakh exclusive of GST @ 18%.*
- However, effective from 1st November, exemption available on 'X' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30th September was ₹45 lakh.*
- (a) *Examine the above scenario and advise LMN Pvt Ltd. whether it needs to get registered under GST.*
- (b) *If the answer to the above question is in affirmative, advise LMN Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing "X"?*
3. *SNP Pvt. Ltd., Coimbatore, Tamil Nadu, exclusively manufactures and sells product 'Z' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells product 'Z' only within Tamil Nadu and is not registered under GST. Further, all the inward supplies of the company are taxable under forward charge. The turnover of the company in the previous year was ₹55 lakh. The company expects the sales to grow by 20% in the current year. Owing to the growing demand for the product, the company decided to increase its production capacity and purchased additional machinery for manufacturing 'Z' on 1st July. The purchase price of such capital goods was ₹20 lakh exclusive of GST @ 18%.*

However, effective from 1st November, exemption available on 'Z' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30th September was ₹ 50 lakh.

- (a) The Board of Directors of SNP Pvt. Ltd. wants to know whether they have to register under GST?
- (b) In case in the above question, SNP Pvt. Ltd. is already registered with respect to certain taxable supplies being made by it along with manufacture of exempt product 'Z', other facts remaining the same, can it take input tax credit on additional machinery purchased exclusively for manufacturing 'Z'? If yes, then how much credit can be availed?

Advice SNP Pvt. Ltd. on the above issues with reference to the provisions of GST law.

4. Rishabh Enterprises – a sole proprietorship firm – started an air-conditioned restaurant in Virar, Maharashtra in the month of February wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In March, the firm opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Determine whether Rishabh Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	February	March
	(₹) *	(₹) *
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	6,50,000
Sale of alcoholic liquor for human consumption in Uttarakhand		5,00,000
Supply of packed food items from restaurant in Maharashtra	1,50,000	2,00,000

* excluding GST

You are required to provide reasons for treatment of various items given above.

5. With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act.

Sl. No.	Particulars	Amount (₹)
(i)	Sale of diesel on which VAT is levied by Rajasthan Government.	1,00,000
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal by declaring the place of M/s Jayant Enterprises as its additional place of business.	3,00,000
(iii)	Export of goods to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in Rajasthan.	5,00,000
(v)	Outward supply of services on which GST is to be paid by recipient under reverse charge.	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above.

6. Rajesh Dynamics, having its head office in Chennai, Tamil Nadu carries on the following activities with respective turnovers in a financial year:

	₹
Supply of petrol at Chennai, Tamil Nadu	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	9,00,000
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration	1,50,000
Value of taxable supplies at Manipur branch	11,50,000

It argues that it does not have taxable turnover crossing threshold limit of ₹ 40,00,000 either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur branch. Further, it believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but is required for determining the eligibility for composition levy.

Determine the aggregate turnover of Rajesh Dynamics. You are also required to review the technical veracity of the arguments of Rajesh Dynamics.



ANSWERS/HINTS

1. As per section 22 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person exclusively making taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

As per section 2(6), aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is to be computed on all India basis.

In the light of the afore-mentioned provisions, the aggregate turnover of Mahadev Enterprises is computed as under:

Computation of State-wise aggregate turnover of Mahadev Enterprises

Particulars	Himachal Pradesh	Uttarakhand	Tripura
	(₹)*	(₹)*	(₹)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Intra-State supply of non-taxable goods (Refer Note below)	-	21,00,000	40,000
Aggregate Turnover	22,50,000	21,00,000	13,40,000

Note: As per section 2(47), exempt supply includes non-taxable supply. Thus, intra-State supply of non-taxable goods in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, included in the aggregate turnover.

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh, Tripura and Uttarakhand. However, since Mahadev Enterprises makes taxable supply of goods from one of the specified Special Category States (i.e. Tripura), it will not be eligible for the higher threshold limit of ₹ 40 lakh; instead, the threshold limit for registration will be reduced to ₹ 10 lakh.

- (1) In view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the aggregate turnover amounting to ₹ 56,90,000 (computed on all India basis) of the States of Himachal Pradesh, Uttarakhand and Tripura since the applicable threshold limit of registration in this case is ₹ 10 lakh. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.

- (2) (a) If Mahadev Enterprises is dealing in supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be ₹ 40 lakh. Thus, Mahadev Enterprises will not be liable for registration as its aggregate turnover would be ₹ 22,50,000.
- (b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh then higher threshold limit of ₹ 40 lakh will not be applicable as the same applies only in case of exclusive supply of goods. Therefore, in this case, the applicable threshold limit will be ₹ 20 lakh and hence, Mahadev Enterprises will be liable to registration.
- (c) In case of inter-State supplies of taxable goods other than notified handicraft goods or notified hand-made products, section 24 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.
2. (a) Section 22(1) read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a).

In the given case, the turnover of the company for the half year ended on 30th September is ₹ 45 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN Pvt. Ltd. supplied exempted goods till 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3).

However, the position will change from 1st November as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6), the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' prior to 1st November will also be considered for determining the limit of ₹ 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

- (b) Section 18(1)(a) provides that a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Thus, LMN Pvt. Ltd. cannot avail credit for additional machinery purchased exclusively for manufacturing X as input tax credit of only inputs is allowed when a person gets registered for the first time.

3. (a) Section 22(1) read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, i.e. States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

However, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a).

In the given case, the turnover of the company for the half year ended on 30th September is ₹ 50 lakh which is more than the applicable

threshold limit of ₹ 40 lakh. Therefore, as per section 22, the company will be liable to registration. However, since SNP Pvt. Ltd. supplied exempted goods till 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3).

However, the position will change from 1st November as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6), the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'Z' will be considered for determining the threshold limit even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

Further, the company cannot avail exemption of ₹ 40 lakh from 1st November as the GST law does not provide any threshold exemption from payment of tax but threshold exemption from obtaining registration (which in this case had been crossed).

- (b)** Rule 43(1)(a) of the CGST Rules, 2017 disallows input tax credit on capital goods used or intended to be used exclusively for effecting exempt supplies.

However, as per section 18(1)(d), where an exempt supply of goods and/or services by a registered person becomes a taxable supply, such person gets entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, SNP Pvt. Ltd. could not claim credit on machinery till the time the supply of product 'Z' for which said machinery was being used was exempt. However, it can claim credit from 31st October - the day immediately preceding the date from which the supply of product 'Z' became taxable (1st November).

The credit will be available for the remaining useful life of the machinery and will be computed as follows:

Date of purchase of machinery	1 st July
Date on which credit becomes eligible	31 st October
Number of quarters for which credit is to be reduced	2 (including part of quarter)
GST paid on machinery [₹ 20,00,000 x 18%]	₹ 3,60,000
Credit to be reduced [₹ 3,60,000 x 5% x 2]	₹ 36,000
Amount of credit that can be taken [₹ 3,60,000 – ₹ 36,000]	₹ 3,24,000

4. As per section 22 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

As per section 2(6), aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

In the given question, since Rishabh Enterprises is engaged in making taxable supplies of goods and services from Maharashtra and non-taxable supplies from Uttarakhand, the threshold limit for obtaining registration is ₹ 20 lakh.

In the light of the afore-mentioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

Computation of aggregate turnover of Rishabh Enterprises

Particulars	Turnover of February (₹)	Cumulative turnover of February & March (₹)
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	12,00,000 [₹ 5,50,000 + ₹ 6,50,000]
<i>Add:</i> Sale of alcoholic liquor for human consumption in Uttarakhand [As per section 2(47), exempt supply includes non-taxable supply. Thus, supply of alcoholic liquor for human consumption in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore,		5,00,000

includible while computing the aggregate turnover.]		
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [₹ 1,50,000 + ₹ 2,00,000]
Aggregate Turnover	7,00,000	20,50,000

Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed ₹ 20 lakh in that month. However, since its aggregate turnover exceeds ₹ 20 lakh in the month of March, it should apply for registration within 30 days from the date on which it becomes liable to registration. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand. It should obtain registration in Maharashtra.

5. Computation of aggregate turnover of M/s Jayant Enterprises for the FY

Particulars	₹
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000
Supply to its own additional place of business in Rajasthan ³² [Note-4]	Nil
Outward supply of services on which GST is to be paid by recipient under reverse charge [Note-5]	1,00,000
Aggregate turnover	7,00,000

³²The above solution has been worked out on the assumption that supply to another place of business is without consideration (as per general business practices).

Notes:-

1. As per section 2(47), exempt supply includes non-taxable supply. Thus, supply of diesel, being a non-taxable supply, is an exempt supply and exempt supply is specifically includible in aggregate turnover in terms of section 2(6).
2. Supply of goods after completion of job work by a principal by declaring the place of business of job worker its additional place of business shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22.
3. Export supplies are specifically includible in the aggregate turnover in terms of section 2(6).
4. Supply made without consideration to units within the same State is a not a supply and hence not includible in aggregate turnover.
5. Outward supplies taxable under reverse charge would be part of the "aggregate turnover" of the supplier of such supplies. Such turnover is not included as turnover in the hands of recipient.

As per section 22 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

The applicable turnover limit for registration, in the given case, will be ₹ 20 lakh as Rajasthan is not a Special Category State and M/s. Jayant Enterprises is engaged in supply of goods and services. Although, the aggregate turnover of M/s Jayant Enterprises does not exceed ₹ 20 lakh, it is compulsorily required to register in terms of section 24(i) irrespective of the turnover limit as it is engaged in making inter-State supply of goods in the form of exports to England.

6. Computation of aggregate turnover of Rajesh Dynamics:

Particulars	₹
Supply of petrol at Chennai, Tamil Nadu [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6)]	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	1,50,000
Value of taxable supplies of Manipur Branch	11,50,000
Aggregate turnover	33,00,000

Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceed ₹ 40 lakh. However, since Rajesh Dynamics also makes taxable supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to ₹ 10 lakh in terms of section 22(1) [Notification No.10/2019-CT dated. 07.03.2019].

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and

secondly, the same is computed on all India basis and not State-wise.

Apart from this, Rajesh Dynamics is also wrong in believing that aggregate turnover is computed only for the purpose of determining the eligibility limit for composition levy since the aggregate turnover is required for determining the eligibility for both registration and composition levy.

Last but not the least, Rajesh Dynamics is compulsorily required to register under section 24 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.



TEST YOUR KNOWLEDGE

1. *Jai, a registered supplier, runs a general store in Ludhiana, Punjab. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:*
 - (i) *Whether Jai is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?*
 - (ii) *Jai sells some exempted as well as taxable goods valuing ₹ 5,000 to a school student. Is he mandatorily required to issue two separate GST documents?*
 - (iii) *Jai wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customers. You are required to advise him.*

2. *Avtaar Enterprises, Kanpur started trading exclusively in ayurvedic medicines from July 1. Its turnover exceeded ₹40 lakh on October 3. The firm applied for registration on October 31 and was issued registration certificate on November 5.*

Examine whether any revised invoice can be issued in the given scenario. If the answer to the first question is in affirmative, determine the period for which the revised invoices can be issued as also the last date up to which the same can be issued.

3. *Discuss the provisions relating to issue of an invoice/document in the following circumstances:*
 - (i) *Advance payment is received against a supply, but subsequently no supplies are made.*
 - (ii) *Goods are sent on approval for sale or return and are removed before the supply takes place.*
 - (iii) *Mr. Mohan provides continuous supply of services to his client, where the due date of payment for such services is not ascertainable. No advance has been received in this behalf.*

4. *Pari & Sons is an unregistered dealer of taxable supplies in Kerala. On 10th August, aggregate turnover of Pari & Sons exceeded ₹ 20,00,000. The firm applied for registration on 27th August and was granted the registration certificate on 1st September.*

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices.



ANSWERS/HINTS

1. (i) No, he is not required to issue tax invoice in all cases. As per section 31(1), every registered person supplying taxable goods is required to issue a 'tax invoice'. Section 31(3)(c) stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.

Further, rule 46A provides that a registered person supplying taxable as well as exempted goods or services or both to an un-registered person may issue a single 'invoice-cum-bill of supply' for all such supplies.

However, as per section 31(3)(b) read with rule 46 and 49, a registered person may not issue a tax invoice/bill of supply if:

- (i) value of the goods supplied < ₹ 200,
- (ii) the recipient is unregistered; and
- (iii) the recipient does not require such invoice.

Instead, such registered person shall issue a Consolidated Tax Invoice/bill of supply for such supplies at the close of each day in respect of all such supplies.

- (ii) As per rule 46A, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single **"invoice-cum-bill of supply"** may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply

separately to the school student in respect of supply of the taxable and exempted goods respectively.

- (iii) As per section 33, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

As per rule 46(m), a tax invoice shall contain the various particulars, *inter alia*, namely, amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

Hence, Jai has to show the tax amount separately in the tax invoices issued to customers.

2. As per section 31(3)(a), a registered person may, within one month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

Further, rule 10(2) lays down that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

In the given case, Avtaar Enterprises has applied for registration within 30 days of becoming liable for registration. Thus, the effective date of registration is the date on which Avtaar Enterprises became liable for registration i.e., October 3. Therefore, since in the given case there is a time lag between the effective date of registration (October 3) and the date of grant of certificate of registration (November 5), revised invoices can be issued. The same can be issued for supplies made during this intervening period i.e., for the period beginning with October 3 till November 5. Further, the revised invoices can be issued for the said period till December 5.

3. (i) As per section 31(3)(e), where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and no tax invoice is issued in pursuance thereof, a refund voucher may be issued to the person who had made the advance payment.

- (ii) As per section 31(7), where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.
 - (iii) As per section 31(5)(b), in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment
4. Section 22(1) provides that every supplier is liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit (₹ 20 lakh).

Section 25(1) provides that a supplier whose aggregate turnover in a financial year exceeds the threshold limit in a State/UT is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit).

Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration vide rule 10(2); otherwise it is the date of grant of registration in terms of rule 10(3).

In the given case, since Pari & Sons have applied for registration on 27th August which is within 30 days from the date of becoming liable to registration (10th August), its effective date of registration is 10th August.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within one month from the date of issuance of registration certificate [Section 31(3)(a) read with rule 53(2)].

In view of the same, Pari & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10th August) and the date of issuance of registration certificate (1st September), on or before 1st October.

- (i) being a composition supplier has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters, or
- (ii) being a person paying tax under regular scheme has not furnished the returns for a consecutive period of 2 tax periods, or
- (iii) being a person paying tax under regular scheme has not furnished GSTR-1 for any 2 months or quarters, as the case may be, or
- (iv) being a person whose registration has been suspended.

However, Commissioner (jurisdictional commissioner) may, on sufficient cause being shown and for reasons to be recorded in writing, allow furnishing of the said information in Part A of Form GST EWB-01, subject to prescribed conditions and restrictions.



TEST YOUR KNOWLEDGE

1. *Mala Services Ltd. is a supplier of management consultancy services registered in Haryana. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?*
2. *Essel Groups has started making taxable supplies and gets registered under GST law. You are required to advise it about the accounts and records required to be maintained by it as required under section 35(1).*
3. *Swad Restaurant has opted for composition scheme in the current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy though required to be maintained by a normal tax-payer as enumerated in rule 56.*
4. *ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf wherein the invoice for supply or procurement on behalf of ABC*

Manufacturers Ltd. is issued by Raghav & Sons in its own name. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to be maintained by Raghav & Sons as per rule 56(11).

5. *Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). It wants to send the consignment of such toys to the retail seller in Gujarat.*

You are required to advise Sindhi Toys Manufacturers on the following issues:

- (a) *Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?*
- (b) *If yes, who is required to generate the e-way bill?*
- (c) *What will be the consequences for non-issuance of e-way bill?*
6. *Power Electricals Ltd., a registered supplier of air-conditioners, is required to send from Mumbai (Maharashtra), a consignment of parts of air-conditioner to be replaced under warranty at various client locations in Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹ 70,000. Power Electricals Ltd. claims that since movement of goods to Gujarat is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case.*

You are required to examine the technical veracity of the claim made by Power Electricals Ltd.

7. *Beauty Cosmetics Ltd. has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Prasannaa, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹ 65,000 can be sent from its Malad (Mumbai) store. Both the stores are instructed to issue separate invoices for the goods sent to Prasannaa. The goods are transported to Prasannaa in Delhi, in a single conveyance owned by Radhey Transporters.*

You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s).



ANSWERS/HINTS

1. Section 36 stipulates that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

2. Section 35(1) stipulates that a true and correct account of following is to be maintained:
 - (a) production or manufacture of goods;
 - (b) inward and outward supply of goods or services or both;
 - (c) stock of goods;
 - (d) input tax credit availed;
 - (e) output tax payable and paid
 - (f) such other particulars as may be prescribed.
3. Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4), but are required to be maintained by a normal tax payer:
 - (I) **Stock of goods:** Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

- (II) **Details of tax:** Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
4. Rule 56(11) provides that every agent shall maintain accounts depicting the-
- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
 - (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
 - (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
 - (d) details of accounts furnished to every principal; and
 - (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.
5. (a) Rule 138(1) provides that e-way Bill is mandatorily required to be generated if the goods are moved, *inter alia*, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Accordingly, in the given case, the consignment value will be as follows:

$$= ₹ 48,000 \times 118\%$$

$$= ₹ 56,640.$$

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

- (b)** An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000/, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill on the common portal prior to the movement of goods [Rule 138(7)].

- (c)** It is mandatory to generate e-way bill in all cases where the value of consignment of goods being transported is more than ₹ 50,000/- and it is not otherwise exempted in terms of rule 138(14). If e-way bills,

wherever required, are not issued in accordance with the provisions contained in rule 138, the same will be considered as contravention of rules.

As per section 122(1)(xiv), a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable) whichever is greater. Moreover, as per section 129(1), where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure.

6. The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1), *inter alia*, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,

shall, generate an electronic-way bill (E-way Bill) before commencement of such movement.

CBIC *vide FAQs on E-way Bill* has also clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.

Thus, in the given case, since the consignment value exceeds ₹ 50,000, e-way bill is required to be mandatorily generated. Therefore, the claim of Power Electricals Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.

7. Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The *FAQs on E-way Bill* issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.



TEST YOUR KNOWLEDGE

1. Miss Nitya has following balances in her Electronic Cash Ledger as on 28th February as per GST portal.

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	Penalty	800
SGST	Tax	80,000
	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

She furnishes return on monthly basis. Her tax liability for the month of February for CGST and SGST was ₹ 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12th April to advise her as to how much amount of tax or interest she is required to pay, if any. In order to optimize the interest liability as per GST provisions, she is willing to make any transfer from the cash ledger between any of the major or minor heads as the case may be. She wants to pay the tax on 20th April.

Other information:

- (i) Date of collection of GST was 18th February.
- (ii) No other transaction after this up to 20th April.
- (iii) Ignore penalty and late fee for this transaction.
- (iv) No other balance is available.

You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable.

2. A makes intra-State supply of goods valued at ₹ 50,000 (excluding taxes) to B within State of Karnataka. There is no input tax credit balance available with A. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin on the value of goods excluding taxes. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin on the value of goods excluding taxes.

Assume that the rate of GST chargeable is 18% (CGST and SGST at 9% each and IGST chargeable at 18%) and every person involved in the aforesaid supplies are registered tax payers. Calculate tax payable at each stage of the transactions detailed above. Wherever input tax credit is available and can be utilized, calculate the net tax payable in cash. At each stage of the transaction, indicate which Government will receive the tax paid and to what extent.

3. Can one use input tax credit for payment of interest, penalty or payment of GST under reverse charge?
4. M/s PPC & Co. have availed input tax credit of ₹ 42,500 during September under IGST head, instead of availing ₹ 21,250 under CGST & SGST heads. Mr. X, accountant of the above entity would like to use Form GST PMT-09 for making a transfer from IGST head to respective CGST & SGST heads.

Examine the scenario and offer your comments.

5. ABC Ltd. has belatedly filed GST return (under section 39) for the month of January after 60 days from the due date for filing such return. Total tax paid in such return is as below:

Particulars	IGST (₹)	CGST (₹)	SGST (₹)
Output tax payable	4,50,000	2,85,000	2,85,000
Tax payable under reverse charge	18,000	32,000	32,000
Input tax available for utilisation	2,50,000	55,000	55,000
Tax paid through Electronic Cash Ledger	2,18,000	2,62,000	2,62,000

Examine the interest payable as per the provisions of GST law with the help of above information.

What would be your answer, if entire tax for the month of January has to be paid through Electronic Credit Ledger except taxes to be paid on reverse charge basis?

6. Examine the taxes to be paid for the month of July on the basis of below information furnished by M/s Zinc & Co.:

Particulars	IGST (₹)	CGST (₹)	SGST (₹)
Output tax payable	14,75,000	28,34,000	28,34,000
Tax payable under reverse charge	36,000	1,44,000	1,44,000
Balance in Electronic Credit Ledger	26,52,000	18,32,000	18,32,000

Output tax reported under IGST column pertains to the month of February, which was not paid for the said period. Also, note that input tax credit available in Electronic Credit Ledger pertains to input tax on purchases made during the month of July and no opening balance exists from previous tax period. It furnishes return on monthly basis.

7. M/s Neptune & Co. is registered under GST in the state of Maharashtra. They have made zero-rated supply of goods worth ₹ 84,50,000 on payment of IGST for ₹ 10,14,000 during the month of May. The refund application under section 54 for the above supply has been rejected by the proper officer.

Mr. A, taxation manager of the firm, has sought for recrediting the Electronic Credit Ledger as per the provisions of rule 86 for the above rejection. Examine the scenario and offer your comments.

8. Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, respectively as under:

S.No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located & registered in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh)	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹ 7,00,000 and for supply of printed post cards (taxable under GST) is ₹ 2,72,000.]	9,72,000	50,000 for books & 20,000 for printed post cards
(vii)	Maintenance of street lights in Municipal area of East Delhi*	3,50,000	3,50,000

	<p><i>[The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.]</i></p> <p><i>*an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution</i></p>		
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You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

9. *Yash Shoppe, a registered supplier of Jaipur, is engaged in supply of various goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51.*

You are required to briefly explain the provisions relating to tax deduction at source under section 51 and also determine the amount of tax, if any, to be deducted from each of the receivables given below (independent cases) assuming that the payments as per the contract values are made on 31st October. The rates of CGST, SGST and IGST may be assumed to be 6%, 6% and 12% respectively.

- (1) Supply of computer stationery to Public Sector Undertaking (PSU) located & registered in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)*
- (2) Supply of air conditioner to GST department located & registered in Delhi. Total contract value is ₹ 2,55,000 (exclusive of GST)*
- (3) Supply of generator renting service to Municipal Corporation of Jaipur (not exempt under GST law). Total contract value is ₹ 3,50,000 (inclusive of GST)*



ANSWERS/HINTS

1. Due date for payment of tax collected on 18th February is 20th March. Interest @ 18% p.a. is payable for the period for which the tax remains unpaid in terms of section 50 of CGST Act, 2017. In the given case, since Miss Nitya wants to pay the tax on 20th April, interest payable on the amount of CGST and SGST each is as follows:

$$₹ 75,000 \times 18\% \times 31/365 = ₹ 1,147 \text{ (rounded off)}$$

As per Section 49(10) of the CGST Act, 2017, any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act, 2017 can be transferred to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed. Thus, amount entered under any Minor head (Tax, Interest, Penalty, etc.) and Major Head (CGST, IGST, SGST/UTGST) of the Electronic Cash Ledger can be transferred to any other major or minor head. Consequently, cross-utilization among Major and Minor heads is also possible.

Thus, Miss Nitya is liable to pay the following amount of tax and interest as under:

	CGST		SGST	
	Tax	Interest	Tax	Interest
Tax Liability	75,000	1,147	75,000	1,147
Balances in Electronic cash ledger in same major/minor head	<u>40,000</u>	<u>1,000</u>	<u>80,000</u>	<u>400</u>
Balance transferred from other major/minor head	35,000 (Note 1)	147 (Note 2)	Nil	747 (Note 3)
Amount payable in cash	Nil	Nil	Nil	Nil

Note 1 – ₹ 35,000 shortfall amount has been transferred from cash ledger balance available in Major Head IGST.

Note 2 – ₹ 147 shortfall amount has been transferred from cash ledger balance in minor head penalty of major head CGST.

Note 3 – ₹ 747 shortfall amount has been transferred from cash ledger balance in minor head tax of major head SGST.

Since there is no restriction in intra-head or inter-head transfer of available balance in cash ledger as per the relevant provisions, it is upon the taxpayer to decide from which account the shortfall has to be made good.

2. I. Intra-State supply of goods by A to B

	₹
Value charged for supply of goods	50,000
Add: CGST @ 9%	4,500
Add: SGST @ 9%	4,500
Total price charged by A from B	<u>59,000</u>

A does not have credit of CGST, SGST or IGST. Thus, the entire CGST (₹ 4,500) & SGST (₹ 4,500) charged will be paid in cash by A, which shall be allocated to Central Government and Karnataka Government in specified manner.

II. Inter-State supply of goods by B to X Ltd. – Margin @ 10%

	₹
Value charged for supply of goods (₹ 50,000 x 110%)	55,000
Add: IGST @ 18%	<u>9,900</u>
Total price charged by B from X Ltd.	64,900

Computation of IGST payable by B to Central Government in cash

	₹
IGST payable	9,900

Less: Credit of CGST	4,500
Less: Credit of SGST	4,500
IGST payable to Central Government in cash	900

Credit of CGST and SGST can be used to pay IGST provided the SGST credit shall be utilised towards payment of IGST only where the balance of CGST credit is not available for payment of IGST. [Section 49(5) of the CGST Act, 2017].

III. Intra-State supply of goods by X Ltd. to Y

	₹
Value charged for supply of goods (₹ 55,000 x 110%)	60,500
Add: CGST @ 9%	5,445
Add: SGST @ 9%	5,445
Total price charged by X Ltd. from Y	71,390

Computation of CGST and SGST payable by X Ltd in cash

	₹
CGST payable	5,445
Less: Credit of IGST	<u>5,445</u>
CGST payable to Central Government in cash	<u>Nil</u>
SGST payable	5,445
Less: Available Credit of IGST [₹ 9,900 – ₹ 5,445]	<u>4,455</u>
SGST payable to Telangana Government in cash	<u>990</u>

Credit of IGST shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST/UTGST, as the case may be, in any order and in any proportion. Here, there is no payment to be made with respect to IGST so its credit balance will be directly utilised for making payment of CGST or SGST, in any order. Central

Government will transfer IGST of ₹ 4,455 utilised in the payment of SGST to Telangana Government.

3. No, as per section 49(4) the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.

As per section 2(82), output tax means, the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest, penalty or GST payment under reverse charge.

4. As per provisions of section 49(10) read with rule 87(13) of CGST Rules, 2017, "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount **available in the electronic cash ledger** under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09".

It is important to note that only amounts available under Electronic Cash Ledger can be transferred to the respective heads using Form GST PMT-09 and not otherwise.

Accordingly, contention of the Accountant Mr. X of M/s PPC & Co., is not valid for transfer of ₹ 42,500 from head IGST to respective CGST & SGST in Electronic Credit Ledger.

5. Proviso to section 50 lays down that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period **furnished after the due date in accordance with the provisions of section 39**, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

In the given scenario, ABC Ltd. has filed its return belatedly and as per the above provisions, interest is payable on the tax component paid through Electronic Cash Ledger only. A point relevant to note here is that tax payable on reverse charge basis also carries interest for the period of delay in remittance of tax and input tax credit cannot be used to pay the same (i.e. tax payable under reverse charge has to be paid in cash).

Accordingly, interest under section 50 payable for the tax paid through Electronic Cash Ledger is computed as below:

$$\text{IGST: } 218,000 * 18\% * 60/365 = 6,450$$

$$\text{CGST: } 262,000 * 18\% * 60/365 = 7,752$$

$$\text{SGST: } 262,000 * 18\% * 60/365 = 7,752$$

Further, if entire tax payable for January is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under section 50 is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:

$$\text{IGST: } 18,000 * 18\% * 60/365 = 533 \text{ (rounded off)}$$

$$\text{CGST: } 32,000 * 18\% * 60/365 = 947 \text{ (rounded off)}$$

$$\text{SGST: } 32,000 * 18\% * 60/365 = 947 \text{ (rounded off)}$$

- 6.** Payment of taxes is governed as per the provisions laid in section 49 read with section 49A and 49B of CGST Act, 2017 along with rule 88A of CGST Rules, 2017

Also, section 49(8) of CGST Act, stipulates that every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;
- (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;"

As per the above provisions, self-assessed tax of previous tax period i.e. February shall be paid first and later self-assessed tax of current tax period i.e. July shall be paid.

Payment of taxes under forward charge

Particulars	IGST	CGST	SGST
Balance in electronic credit ledger for utilization	26,52,000	18,32,000	18,32,000
Output tax payable for July	14,75,000	28,34,000	28,34,000
Less: Utilization of input tax credit:			
a. IGST [Refer Note1]	14,75,000	5,88,500	5,88,500
b. CGST	0	18,32,000	0
c. SGST	0	0	18,32,000
Amount payable through electronic cash ledger	Nil	4,13,500	4,13,500

Total amount payable through electronic cash ledger

Particulars	IGST	CGST	SGST
Amount payable through Electronic cash ledger under forward charge	Nil	4,13,500	4,13,500
Amount payable through electronic cash ledger under reverse charge [Refer Note-2]	<u>36,000</u>	<u>1,44,000</u>	<u>1,44,000</u>
Total amount payable through electronic cash ledger	36,000	5,57,500	557,500

Notes:-

- 1 After utilization of IGST credit towards output IGST liability, balance has been utilized equally amongst CGST & SGST
- 2 Input tax credit cannot be utilized for discharging tax liability under reverse charge basis, thus payable vide electronic cash ledger.

Since, M/s Zinc & Co., have defaulted in payment of taxes for the month of February and the same has been paid during July, interest is payable as per the provisions of section 50 of the CGST Act, 2017

7. Rule 86 of CGST Rules provides that where a registered person has claimed refund of any unutilized amount (i.e. ITC) from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

If the refund so filed is rejected, either fully or partly, the amount so debited to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer.

In the present case, M/s Neptune & Co., have made zero-rated supply with payment of IGST for ₹ 10,14,000 and the refund for the same has been rejected by the proper officer. Therefore, contention of Mr. A is not sustainable as debit entry in the Electronic Credit Ledger has not been made as per sub-rule (3) of Rule 86 towards "refund of any unutilized amount".

Supply made during May by M/s Neptune & Co. is on payment of IGST and therefore provisions laid out in sub-rule (4) of Rule 86 shall not be applicable.

8. As per section 51 read with section 20 of the IGST Act, 2017 and *Notification No. 50/2018 CT 13.09.2018*, following persons are required to deduct CGST @ 1% [Effective tax 2% (1% CGST + 1% SGST/UTGST)] or IGST @ 2% from the payment made/credited to the supplier (deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000:
- (a) a department or establishment of the Central Government or State Government; or
 - (b) local authority; or
 - (c) Governmental agencies; or
 - (d) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function; or
 - (e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or

(f) Public sector undertakings.

Further, for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding CGST, SGST/UTGST, IGST and GST Compensation Cess indicated in the invoice.

Since in the given case, Manihaar Enterprises is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under section 51, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata (Note-1)	2,60,000	15,000	--		
(ii)	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000	--		
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand (Note-3)	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860 (Note-4)	6,49,000	50,000	500	500	

(v)	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	--		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-6)	9,72,000		--		
(vii)	Maintenance of street lights in Municipal area of East Delhi (Note-7)	3,50,000	3,50,000	--		

Notes:

1. Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 2,60,000 \times 100 / 118$$

$$= ₹ 2,20,339 \text{ (rounded off)}$$

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

2. Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

$$= ₹ 2,95,000 \times 100 / 118$$

$$= ₹ 2,50,000$$

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

3. Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 5,90,000 \times 100 / 118$$

= ₹ 5,00,000

Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.

4. Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 6,49,000 × 100 / 118

= ₹ 5,50,000

Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.

5. Proviso to section 51(1) of the CGST Act, 2017 stipulates that no tax shall be deducted if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Section 12(3) of the IGST Act, 2017, *inter alia*, stipulates that the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Andhra Bhawan shall be Delhi.

Since the location of the supplier (Manihar Enterprises) and the place of supply is Delhi and the State of registration of the recipient i.e. Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.

6. If the contract is made for both taxable supply and exempted supply, tax shall be deducted if the total value of taxable supply in the contract exceeds ₹ 2,50,000. Being an intra-State supply of goods, supply of printed post cards to a West Delhi Post Office is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

$$= ₹ 2,72,000 \times 100 / 118$$

$$= ₹ 2,30,509 \text{ (rounded off)}$$

Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

7. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, *inter alia*, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality) in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

9. As per section 51 of the CGST Act, 2017, Government departments, agencies, local authority and notified persons are required to deduct tax @ 2% (1% CGST + 1% SGST/UTGST) or IGST @ 2% from payment made to the supplier of taxable goods and/ or services where the total value of such supply [excluding tax and compensation cess indicated in the invoice], under a contract, exceeds ₹ 2,50,000.

Since in the given case, Yash Shoppe is supplying goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value due to be received [excluding GST] (₹)	Tax to be deducted		
			CGST @ 1% (₹)	SGST @ 1% (₹)	IGST @ 2% (₹)
(1)	Supply of computer stationery to PSU in Mumbai [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] does not exceed ₹ 2,50,000, tax is not required to be deducted.]	2,42,857 [2,72,000 × 100 / 112]	--	--	
(2)	Supply of air conditioner to GST Department in Delhi [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] exceeds ₹ 2,50,000, tax is required to be deducted.]	2,55,000	--		5,100
(3)	Supply of a generator renting service to Municipal Corporation of Jaipur [Since the total value of supply under the contract [excluding CGST and SGST (being intra-State supply)] exceeds ₹ 2,50,000, tax is required to be deducted.]	3,12,500 [3,50,000 × 100 / 112]	3,125	3,125	
	Total		3,125	3,125	5,100



TEST YOUR KNOWLEDGE

1. *Starkart Limited owns and operates a web portal in the name of "Starkart" and is registered with the jurisdictional GST authorities in Delhi as an electronic commerce operator and is liable to collect tax at source under section 52. Starkart provides listing service to various sellers for selling the goods to ultimate customers. Besides this, Starkart also sells its own products through the same web portal.*

For the listing services provided to sellers, Starkart charges a listing fee at the rate of 10% of turnover of goods sold by the seller in a particular month. Such listing fee is recovered from the seller irrespective of any return of goods sold through Starkart. The customers can choose from wide range of goods listed on the web portal and place an online order for goods.

The payment is made by the customers through the payment gateway in online mode only. At the time of monthly settlement, Starkart makes the payment to the sellers after adjusting the tax collection at source at the applicable rates.

The invoice for goods sold on Starkart is issued by the seller in the name of customers and tax is charged on the basis of location of seller and customer. The goods are shipped directly by the seller to the customer and there is no responsibility of shipping the goods on Starkart for such third-party sellers.

In case of return of goods by the customer, the shipping is arranged by Starkart. It charges a fee equivalent to 20% of the value of goods returned as cancellation charges and refunds the balance amount to the customer.

Further, 10% of the value of goods returned is collected from the seller by Starkart as handling charges for return of goods.

In the month of January, Pulkit, a resident of Rajasthan, purchased following goods from Starkart:

- a. *Laptop having a value of ₹ 50,000 and a printer having a value of ₹ 10,000. Both the products are sold by Infocom Limited, a seller listed on Starkart and registered under GST in the State of Uttar Pradesh.*

- b. Mobile phone having a value of ₹ 30,000 sold by Starkart in its own capacity.
- c. CCTV camera system having a value of ₹ 1,00,000 sold by Secure World, listed on Starkart and registered under GST in the State of Gujarat.

All the amounts given above are exclusive of GST, wherever applicable.

The opening balance of input tax credit for the relevant tax period for Starkart, Infocom Limited and Secure World is nil. Further, there is no other inward or outward supply transaction for Starkart, Infocom Limited and Secure World in January apart from the aforementioned transactions. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

GST is applicable on all inward and outward supplies at the following rates unless otherwise specified:

CGST - 9%, SGST - 9%, IGST - 18%

Compute the net tax liability (including amount collected as TCS) of Starkart Limited and net GST payable in cash (after set-off of credits, if any) of Infocom Limited and Secure World, for the month of January.

2. Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?
3. Is every e-commerce operator required to collect tax on behalf of actual supplier?
4. State whether the provisions pertaining to tax collected at source under section 52, will be applicable in below mentioned scenarios -
 - (a) Fitan sells watch on its own through its own website
 - (b) ABC limited who is dealer of Fitan brand sells watches through Slipkart, an electronic commerce operator
5. A is an e-commerce operator supplying goods through its electronic portal in capacity of an agent. The goods belong to B and the consideration for such supplies is received by A and remitted to B as per the contractual arrangement. A requires your help in arriving at the rate at which tax shall be collected from the amount which is received by it against the supplies?

6. *X booked a Hotel in Udaipur, Rajasthan through an e-commerce portal for an amount of ₹ 25,000. As per the terms and conditions, the amount was payable at the hotel at the time of check in. Whether TCS provisions shall apply in the present case?*
7. *Sumitra Nandan books a Hotel – Hillpoint Residency - via Zitcom Technologies Ltd. – an ECO - who in turn is integrated with another ECO-Techsuper Ltd. who has agreement with Hillpoint Residency. You are required to determine who is required to collected TCS in the given case.*
8. *AB Pvt. Ltd., Pune, Maharashtra, provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is ₹ 18 lakh.*

Advise AB Pvt. Ltd. as to whether it is required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.?



ANSWERS/HINTS

1. **Computation of net tax liability (including amount collected as TCS) of Starkart Limited for January:**

Particulars	₹
TCS to be collected from Infocom Limited on supply of Laptop and a printer to Pulkit [Starkart is an ECO since it owns and operates a web portal through which Infocom Limited supplies goods. Further, IGST is applicable on said inter-State transaction since supplier - Infocom Limited is located in the State of Uttar Pradesh and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 1% of [₹ 50,000 + ₹ 10,000]	600

<p>GST to be paid by Starkart on supply of mobile phone made on its own account @ 18% (IGST) of ₹ 30,000. IGST is applicable on said inter-State transaction since supplier - Starkart is located in Delhi and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Since supply has been made by Starkart on its own account, no TCS needs to be collected.</p>	5,400
<p>TCS to be collected from Secure World on supply of CCTV camera system to Pulkit</p> <p>[ECO - Starkart is liable to collect TCS on this transaction. Further, IGST is applicable on said inter-State transaction since supplier - Secure World is located in the State of Gujarat and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 1% of ₹ 1,00,000]</p>	1,000
<p>Listing services provided by Starkart to Infocom Limited and Secure Limited @ 10% of turnover for the month of January. Turnover of Infocom Limited and Secure Limited is ₹ 60,000 and ₹ 1,00,000 respectively.</p> <p>IGST @ 18% on (₹ 1,60,000 × 10%) is applicable on said inter-State transaction since supplier – Starkart is located in Delhi and place of supply is Uttar Pradesh and Gujarat respectively [i.e. location of recipient in terms of section 12(2) of the IGST Act, 2017]</p>	2,880
<p>Total GST liability (including TCS) of Starkart for January</p>	<p>9,880</p>

Computation of net GST payable in cash by Infocom Limited for the month of January

Particulars	₹
<p>Gross GST liability [18% of turnover for January (₹ 50,000 + ₹ 10,000)]</p>	<p>10,800</p>

Less: ITC of GST payable on listing services received from [(10% of ₹ 60,000) × 18%]	(1,080)
Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(600)
Net GST payable in cash	9,120

Computation of net GST payable in cash by Secure World for the month of January

Gross GST Liability [18% of turnover for January (₹ 1,00,000)]	18,000
Less: ITC of GST payable on listing services received from [(10% of ₹ 1,00,000) × 18%]	(1,800)
Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(1,000)
Net GST payable in cash	15,200

- The rate of TCS as notified under CGST Act is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 1%.
- Yes, every e-commerce operator is required to collect tax where consideration with **respect to the supply made through it is being collected by the e-commerce operator.**

However, no TCS is required to be collected in the following cases:-

- on supply of services notified under section 9(5) of the CGST Act, 2017.
- on exempt supplies
- on supplies on which the recipient is required to pay tax on reverse charge basis.

4. Answers for both the scenarios is as follows:

As per section 52, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of

- (a) the Council, of the net value of taxable supplies made through it *by other suppliers* where the consideration with respect to such supplies is to be collected by the operator.

Hence, if the person sells on his own, provisions pertaining to tax collected at source (TCS) won't be applicable.

- (b) If ABC limited who is dealer of Fitan brand sells watches through Slipkart, then the provision of TCS will be applicable to Slipkart.
5. As per section 52(1), the TCS provisions are not applicable in cases where the ECO is an agent of the supplier. In the present case, A being an ECO is supplying goods through the electronic portal in capacity of an agent and hence the liability to collect tax as per Section 52 shall not arise in this case.
6. No, as per the provisions under section 52, the TCS provisions shall trigger only when the ECO is receiving the consideration for supply from the recipient of supply. In the present case, the supplier i.e. the hotel is directly receiving the consideration from the recipient of the services i.e. X. Hence, the present transactions shall not trigger the TCS provisions under section 52.
7. The given case is a case of multiple e-commerce model wherein a customer orders supplies via ECO-1 who in turn is integrated with ECO-2 who has agreement with the supplier. In this case, ECO-1 will not have any GST information of the supplier. TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.
- Thus, in the given case, TCS is to be collected by ECO-Techsuper Ltd. who is making payment to Hillpoint Residency for the supply happening through it,
8. As per section 22, every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds threshold limit in a financial year.

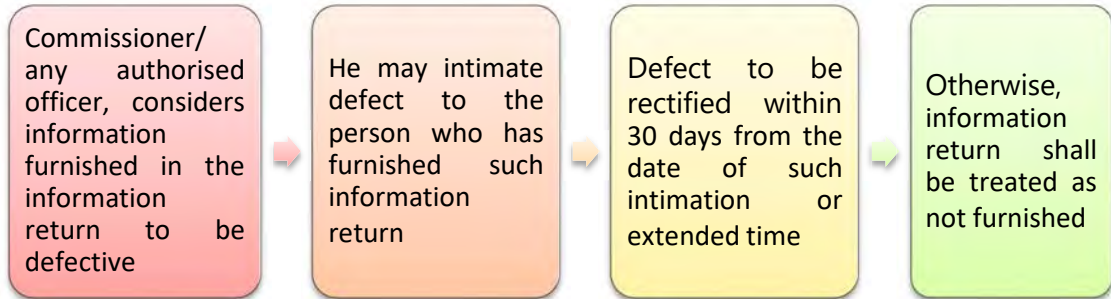
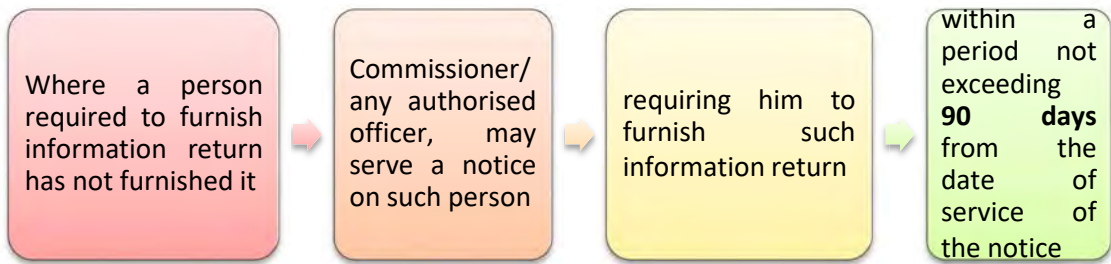
However, section 24 enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52, is one such person specified under clause (ix) of section 24. However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.

Section 2(45) defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Hi-Tech Indya Pvt. Ltd. owns and manages a website for e-commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than ₹20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, AB Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

(ii) Defective Information Return**(iii) Issuance of notice for failure to furnish the information return within stipulated time****TEST YOUR KNOWLEDGE**

1. Which type of taxpayers need to file annual return under section 44? Enumerate.
2. Is an annual return under section 44 and a final return one and the same? Explain.
3. Do input service distributors (ISDs) need to file separate statement of outward supplies (GSTR-1) with their return? Discuss.
4. Is it compulsory for a taxpayer to file return by himself? Explain.
5. Mr. Anand Kumar, a regular taxpayer, filed GSTR-1 for the month of August before the due date. Later, in the month of February next year, he discovers error in the GSTR-1 of the month of August already filed and wants to revise it. You are required to advise him on the future course of action in this scenario.

6. *B Ltd. has filed the return for the month of October belatedly. At the time of computing the late fee to be paid for delay in filing return, B Ltd. has taken a view that if the late fee has been paid as per the provisions under the CGST Act, there is no requirement of paying the late fee under the SGST Act for the same default.*

Whether B Ltd. has taken a correct view? Examine.

7. *Tax authorities have been scrutinizing the returns furnished by A Ltd. During the scrutiny process, A Ltd. has been made aware by the authorities about an incorrect disclosure in a return under section 39 filed by it for a particular tax period.*

A Ltd. seeks your opinion to rectify the incorrect disclosure made in the return.

8. *ABC Ltd. applied for cancellation of GST registration in the month of March. In the month of September, the consultant of ABC Ltd. suggested to furnish the final return in said month. He advised the company that a final return needs to be furnished before the due date of furnishing the return for the month of September of subsequent financial year or before furnishing of annual return (for the financial year in which cancellation has been sought for), whichever is earlier. However, the jurisdictional authorities have yet not passed the order of cancellation due to reasons not known to ABC Ltd.*

Whether the advice given by the consultant of ABC Ltd. is correct? Examine.

9. *XYZ Ltd. has deducted TDS from the consideration payable to A Ltd. for supplies made by it. The deductee, i.e. A Ltd., seeks your advice on taking credit for the TDS deducted by XYZ Ltd. Also, whether the tax deducted by XYZ Ltd. will be shown in the electronic credit ledger or electronic cash ledger of A Ltd.?*

10. *Whether GSTPs are required to furnish any return for disclosure of activities carried out by them for any of the registered person during a tax period? Elucidate.*



ANSWERS/HINTS

1. Every registered person, other than ISD's, casual/non-resident taxpayers, tax deductors at source, tax collector at source are required to file an annual return in Form GSTR-9. Taxpayer under composition scheme are required to file annual return in Form GSTR-9A. The department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing the annual return.
2. No. Annual return has to be filed by every registered person paying tax as a normal taxpayer, with certain exceptions. Final return has to be filed only by those registered persons whose registration under GST has been cancelled. The final return has to be filed within three months of the date of cancellation or the date of cancellation order, whichever is later.
3. No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of outward supplies.
4. No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner(GSTP) as authorised by him subject to confirmation of registered person over mail or SMS each time when return filed by GSTP .
5. The mechanism of filing revised return for any correction of errors/omission is not available under GST. The rectification of errors/omission is allowed in the subsequent returns.

Therefore, Mr. Anand Kumar who discovered an error in GSTR-1 for the month of August cannot revise it. However, he should rectify said error in the GSTR-1 filed for the month of February and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February. The error can be rectified by furnishing appropriate particulars in the "Amendment Tables" contained in GSTR-1.

However, as per section 37(3), no rectification of details furnished in GSTR-1 shall be allowed after 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

6. The understanding of B Ltd. is incorrect. For arriving at the late fee payable on account of delayed filing of GST return, the computation of late fee is made separately for CGST and SGST/UTGST. This is because the provisions of late fee on delayed filing of return are prescribed in both CGST Act and SGST/UTGST Act although a common return is filed for both the laws.
7. In terms of section 39(9), any rectification in the return (under section 39) furnished by the registered person is allowed only when the error or omission is discovered on account of reasons other than scrutiny, audit, inspection, or enforcement activity by the tax authorities.

In the present case, since the incorrect disclosure has been highlighted to A Ltd. by the tax authorities during the process of scrutiny, the rectification of the incorrect disclosure cannot be made by A Ltd. on its own.

8. No, the advice of the consultant is not correct.

In terms of section 45 read with rule 81, every registered person who is required to furnish GSTR-3B and whose registration has been cancelled is required to file a final return within three months of the date of cancellation or date of order of cancellation, whichever is later.

In the given case, the registration of the company has not been cancelled. Therefore, requirement of filing final return will arise only when the registration of the company gets cancelled.

9. In terms of section 51(5) read with rule 66, the deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in GSTR-7 of the deductor, after validation. Similarly, rule 87(9), *inter alia*, provides that any amount deducted under section 51 shall be credited to the electronic cash ledger of the deductee.

Therefore, in the present case, A Ltd., can take credit of TDS amount deducted by XYZ Ltd. in its electronic cash ledger and use the same for payment of tax, interest, penalty, late fee or any other amount.

10. In terms of section 48(2), a registered person may authorise an approved GSTP to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or annual return under section 44 or final return under section 45 and to perform other prescribed functions. Thus, the GSTP can furnish the specified documents or information on behalf of the registered person with prior authority of the registered person.

However, there is no specific return furnishing mechanism for GSTP itself to disclose the activities carried out by it for any of the registered person during a tax period.

India to a place outside India. India has rupee trade with Nepal and Bhutan. The RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. In case of export of goods under GST law, receipt of export proceeds in convertible foreign exchange is not a pre-requisite. [However, non-realization of export proceeds within the time prescribed under FEMA may result in recovery of any refund paid to the taxpayer.] Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.

Export of services: In case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees is allowed in terms of section 2(6). As stated earlier, the RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is considered as export of services subject to fulfillment of other conditions.

Therefore, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can be exported to Nepal and Bhutan under LUT.



TEST YOUR KNOWLEDGE

1. Explain how imports are taxed under GST.
2. Describe how exports are taxed under GST.
3. Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.
4. A Ltd. enters into an agreement for sale of goods with B Ltd., a company based in UAE. B Ltd. requires the goods to be delivered by A Ltd. to C Ltd., a company based in Karnataka.

Whether the transaction will qualify as export of goods under GST? Analyze the scenario and offer your comments.

5. *A Ltd. is making zero rated supplies which are also specifically exempt from GST. The company has paid input tax of ₹2,00,000 on inputs and input services which have been used exclusively in effecting such zero rated supplies.*

Examine if A Ltd. can avail ITC of input tax of ₹2,00,000 paid on inputs and input services used exclusively in effecting such zero rated supplies.

6. *Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Examine.*

7. *Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm orders a gaming software for his son from a company located in USA. He makes the payment for the same from his personal bank account.*

Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?

8. *'Separate LUT is to be furnished for every export supply.'*

With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

9. *AXT Ltd. entered into a high sea sale transaction with BYU Ltd. for certain goods. AXT Ltd. is of the view that GST on such sale transaction is payable at the time of such sale and basic customs duty is payable at the time of filing the bill of entry for import of goods.*

Examine whether the view taken by AXT Ltd. is correct.



ANSWERS/HINTS

1. All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.
2. Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.
3. No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide *Notification No. 37/2017 CT dated 4.10.2017*. The other conditions for executing LUT have been specified in *Circular No. 8/8/2017 GST dated 4.10.2017 as amended*.
4. As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India.

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.
5. As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of ₹ 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

6. *Circular No. 48/22/2018 GST* has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer is treated as a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter-State supply.

7. The supply of gaming software is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore, being an unregistered person receiving OIDAR service in taxable territory, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services [*Notification No. 9/2017 IT (R) dated 28.06.2017*].

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge. Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

8. No, the statement is not correct.

The LUT remains valid for the whole financial year and there is no need to furnish separate LUT for each export supply.

However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

Rule 96A(1) provides *inter alia* that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.

9. AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct.



TEST YOUR KNOWLEDGE

1. *Is there any time limit for sanctioning of refund under section 54?*
2. *Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).*
3. *In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?*
4. *When is a deficiency memo issued in respect of a refund claim made under section 54?*
5. *State the exceptions to the principle of unjust enrichment as applicable to refund claims.*
6. *Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.*

The company has made the following supplies during a tax period:

S. No.	Particulars	(₹)
(i)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is payable on product 'A' at the time of exports. Further, value of like goods domestically supplied by the similarly placed supplier is ₹ 6,00,000]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @ 18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii)	10,00,000

(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(iv)	Export of exempt supplies of goods (Value of like goods domestically supplied by the similarly placed supplier is ₹ 5,00,000)	6,00,000

The ITC available for the above tax period is as follows:

S.No.	Particulars	(₹)
(i)	On inputs	3,50,000
(ii)	On input service	1,50,000
(iii)	On capital goods	1,20,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

7. Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (₹)	Output GST Rates	ITC availed (₹)	Input GST Rates
A	500,000	5%	54,000 (Goods)	18%
B	350,000	5%	54,000 (Goods)	18%
C	100,000	18%	10,000 (Service)	18%

*excluding GST

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii)

provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

8. *With reference to section 54(3), mention the cases where refund of unutilised input tax credit is allowed.*
9. *State few cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.*



ANSWERS/HINTS

1. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest @ 6% p.a. will have to be paid in accordance with section 56.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

2. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].
3. In case of refund on account of export of goods, the refund rules do not prescribe BRC/FIRC as a necessary document for filing of refund claim. However, for export of services details of BRC/FIRC is required to be submitted along with the application for refund.

However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non realization of sale proceed along with interest within 30 days [Rule 96B].

4. Rule 90(3) provides for communication in prescribed form (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Further the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies by the proper officer, shall be excluded from the period of two years as specified under Section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

5. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-
 - (a) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.
 - (b) Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.
 - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.
 - (d) refund of tax in pursuance of section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government.
 - (e) if the incidence of tax or interest paid has not been passed on to any other person.
 - (f) such other class of persons who has borne the incidence of tax as the Government may notify.

6. Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

Particulars	(₹)
Exports of product 'A' to UK [Note (i)]	Nil
Domestic supplies of taxable product 'B' during the period [Note (ii)]	90,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	<u>1,07,143</u>
Total refund claim admissible	1,97,143

Notes:

- (i) Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.

Therefore, as per clause (i) of first proviso to section 54(3), a registered person may claim refund, of any unutilised ITC in the case of zero rated supply made without payment of tax at the end of any tax period. However, second proviso to section 54(3) lays down that refund of unutilised ITC is not allowed if the goods exported out of India are subjected to export duty.

- (ii) Refund of unutilised ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Clause (ii) of the first proviso to section 54(3)].

Rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods \& services} \times \frac{\text{Net ITC}}{\text{ITC available on inputs and input services}}$$

where-

“Net ITC” means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

“Adjusted total turnover” means the sum total of the value of:

- (a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &
- (b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services,

excluding:

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

“Relevant period” means the period for which the claim has been filed.

Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000,

Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000 x 10,00,000/ ₹ 28,00,000 – (₹ 50,000 × {₹ 3,50,000/(₹ 3,50,000+₹ 1,50,000)})
= ₹ 90,000

- (iii) As per section 2(39), deemed exports means such supplies of goods as may be notified under section 147. Supplies to EOU is notified as deemed export under section 147 vide *Notification No. 48/2017 CT dated 18.10.2017*. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1)]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.
- (iv) Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the case of zero rated supply made without payment of tax.

Rule 89(4) stipulates that in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

where-

“Net ITC” means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

“Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT, or the value which is 1.5 times the value of like

goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

“Adjusted total turnover” means the same as explained in point ii above.

Here, Turnover of zero rated supply of goods = ₹ 6,00,000 (Lower of ₹ 6,00,000 or 1.5 times of ₹ 5,00,000 i.e. 7,50,000 whichever is lower), Net ITC = ₹ 5,00,000 and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point ii above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,00,000 x ₹ 6,00,000/ ₹ 28,00,000 = ₹ 1,07,143.

7. Section 54(3)(ii) allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii). Further rate of tax on input used in the product C is carrying same rate of tax on output supplies hence it is not the case of inverted duty structure. Therefore, no refund on the Product C.

Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{tax payable on such inverted rated supply of goods and services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

where,-

- A. **"Net ITC"** means input tax credit availed on inputs during the relevant period;
- B. Adjusted Total Turnover means the sum total of the value of-
- (a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
 - (b) the turnover of zero-rated supply of services determined in specified manner and non-zero-rated supply of services, excluding-
 - (i) the value of exempt supplies other than zero-rated supplies; and
 - (ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or rule 89(4B) or both, if any,
 during the relevant period.
- C. Relevant period means the period for which the claim has been filed.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5%
= ₹ 25,000

Net ITC = ₹ 108000 (₹ 54,000 + ₹ 54,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to

inputs eligible for refund of inverted rated supply of goods or not - *Circular No. 79/53/2018-GST dated 31.12.2018*]

Adjusted Total Turnover = ₹ 9,50,000 (₹ 5,00,000 + ₹ 3,50,000 + ₹ 1,00,000)

Turnover of inverted rated supply of Product A = ₹ 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

= [(₹ 5,00,000 × ₹ 108000)/ ₹ 9,50,000] – (₹ 25,000 × 108,000/118,000)

= ₹ 33,961 (rounded off)

8. As per section 54(3), a registered person may claim refund of unutilised input tax credit at the end of any tax period in the following cases:

(i) **Zero rated supplies made without payment of tax:** Supply of goods or services or both for authorised operations to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies.

(ii) **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

However, refund of unutilized input tax credit shall not be allowed if:

- ◆ the goods exported out of India are subjected to export duty;
- ◆ the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

9. Section 54(8) provides that the refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to —

- (a) refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;

- (b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by notified class of applicants.

Time limits for the return of inputs/capital goods sent for job-work or supply from job worker's place of business after required processing or treatment

- Principal can take credit on goods (inputs and capital goods) sent for job work.
- Credit can be taken even if the said goods are sent directly to job worker without being first brought to the principal's place of business.

Time limit for return of goods sent for job work/supply from job worker's place of business

- ◆ **Inputs** - 1 year (extendable by another 1 year)
- ◆ **Capital goods** - 3 years (extendable by another 2 years)

from the date of sending the same for job work or from the date of receipt of the same by the job worker.

- On failing to comply with the timelines, the goods will be deemed to have been supplied to the job worker on the day they were sent out.
- Principal is liable to pay tax along with applicable interest on such supply.
- Subsequent return of the goods by the job worker will be treated as a separate supply.

Time-lines do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.



TEST YOUR KNOWLEDGE

1. Under what circumstances, can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?
2. What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?
3. Who is responsible for the maintenance of proper accounts related to job work?
4. Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie Engineers. As per agreement, the mould was to remain with the job worker as

long as work was being sent to him.

After four years a departmental audit team that visited the job worker noticed the mould and traced it to Genie Engineers. GST was demanded from Genie Engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker.

How should they respond to this?

5. Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.

On 10th January, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth ₹4 lakh and moulds worth ₹50,000, free of cost, to Sudama Industries Ltd. to make plastic pipes. Sudama Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth ₹1 lakh in the manufacture of pipes. It raised an invoice of ₹2 lakh as job charges for making pipes and returned the manufactured pipes through delivery challan to Plasto Manufacturers on 20th October in the same financial year.

The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sudama Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for ₹7.5 lakh on 20th October.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

- (i) Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?
 - (ii) Whether Sudama Industries can use its own material even when it is manufacturing the plastic pipes on job-work basis?
 - (iii) Whether sending the plastic and moulds to Sudama Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?
 - (iv) Whether Sudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?
6. Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job

work on 28th January. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt. Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of ₹5 lakh for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which is sold by M/s. Prem Tools for ₹45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to Alok Pvt. Ltd. on 3rd December in the same financial year.

Assuming GST rate for metal frame as 28%, for metal waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of M/s Prem Tools. Also, give reason(s) for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by M/s Prem Tools.

7. Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10th April and were received by the job worker on 15th April. Rajesh Enterprises carried out the job work, but did not return the capital goods to their principal - Bedi Manufacturers. Discuss whether Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Bedi Manufacturers.

What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal?

8. Nandeeshwar Manufacturers, a registered person, sends certain category of yarn for processing to the job worker in January. The job worker undertakes the processing work on the yarn as per the requirement of Nandeeshwar Manufacturers. During the process, the job worker uses his own material also. The processed yarn is sold by Nandeeshwar Manufacturers directly from the job worker's premises in the month of March. The balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers in April.

The accountant of job worker is of the opinion that since the job worker is using his own material also in the processing, the supply being made by it to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services. Do you agree with the opinion of accountant of the job worker?



ANSWERS/HINTS

1. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely (i) where the job worker is a registered taxable person or (ii) where the principal is engaged in supply of such goods as may be notified by the Commissioner.
2. If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus, the principal would be liable to pay tax accordingly along with interest. Further, if the job worker is registered, when the processed goods are sent back by it to the principal, the same shall also be considered as a supply over and above the charges for job work.
3. It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.
4. Genie Engineers should reply on the following lines:

Under section 19(6), the principal may take ITC on capital goods sent to a job worker for job work without being first brought to his place of business.

The capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 3 years [extendible by another 2 years] from sending them to the job worker or direct receipt by the job worker from the supplier. If the above time-lines are not met, it is deemed that the capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker [Section 19(6)].

However, sub-section (7) of section 19 provides that the time-limit of three years in sub-section (6) for bringing back the capital goods from the job worker does not apply to moulds.

Accordingly, Genie Engineers have correctly availed the ITC in respect of the moulds delivered to their job worker and not brought back even after completion of four years.

5. (i) As per section 2(68), job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the principal. Thus, the job worker is expected to work on the goods sent by the principal.

Therefore, when the goods are manufactured by Sudama Industries Ltd. for Plasto Manufacturers, it is job work as the process is undertaken on inputs (plastic and moulds) supplied by the principal (Plasto Manufacturers). However, when goods are manufactured for Solid Pipes, it is manufacture by Sudama Industries Ltd on own account as the pipes are manufactured from their own raw material. Further, processing or treatment on job work basis is a supply of service in terms of para 3 of Schedule II to the CGST Act, 2017 and manufacture and selling of pipes on own account is a supply of goods.

- (ii) It has been clarified vide *Circular No. 38/12/2018 GST dated 26.03.2018* that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.
- (iii) Section 143 provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work. Subsequently, on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/ premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools). Thus, the provision relating to return of goods is not applicable in case of moulds, dies, jigs, fixtures and tools.

If the time frame of one year/ three years for bringing back or further supplying the inputs/ capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/ capital goods were sent out

by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within one/ three years of being sent out.

Therefore, the activity of sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is not supply as the manufactured pipes are received back within the stipulated time and the provisions relating to return of goods are not applicable in case of moulds.

Rule 45 provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a delivery challan issued by the principal.

Therefore, Plasto Manufacturers need not issue a taxable invoice for sending the inputs to Sudama Industries Ltd. but should send the inputs under the cover of a challan.

- (iv)** As per section 15(2)(b), any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both, is includible in the value of supply. However, Sudama Industries Ltd. should not include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges as Sudama Industries Ltd. is manufacturing the plastic pipes on job work basis. The scope of supply of Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by the Plasto Manufacturers. Thus, at no point of time was Sudama Industries Ltd. (supplier of job work service) is liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).
- 6.** As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as a service even though the metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to GST at a rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5). Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (₹)
Job charges	5,00,000
GST @ 18% (A)	90,000
Sale of metal waste	45,000
GST @ 12% (B)	5,400
Total GST payable (A) + (B)	95,400

7. As per section 19(5), the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the

job worker on the day when the said capital goods were received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15th April (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15th April and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7)].

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

8. No, the opinion of the accountant of the job worker is not correct. Section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II. Any processing activity carried on any other person's goods is treated as supply of service in terms of Schedule II. *Circular No. 38/12/2018 GST dated 26.03.2018* has also clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work. These goods are not supply *per se*, but are being used in the processing activity carried out by it.

Thus, the activity undertaken by the job worker, in the given case, squarely falls within the purview of Schedule II and shall be considered as supply of service by the job worker to Nandeeshwar Manufacturers.



TEST YOUR KNOWLEDGE

1. *Is summary assessment order to be necessarily passed against the registered person?*
2. *Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?*
3. *Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?*
4. *Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.*
5. *Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017.*
6. *Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.*
7. *Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.*

On 12th January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies the goods on 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of ₹ 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9th April. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of ₹4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 5th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.



ANSWERS/HINTS

1. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the registered person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the registered person and will be assessed to tax.
2. Yes, principal of natural justice is must to be followed before passing assessment order against an unregistered person seeking to impose any financial burden on him.
3. Assessment order passed by the proper officer may be withdrawn in following cases:-
 - (i) **Assessment of non-filers of returns**-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within **60 days** of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.

- (ii) **Summary assessment**-As per section 64(2) of the CGST Act, 2017, a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

4. Audit by Tax authorities under section 65 of the CGST Act, 2017:-

- 1 The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
- 2 The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

Special Audit under section 66 of the CGST Act, 2017:-

- 1 The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.
 - 2 Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.
- 5.** If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:
- (i) conduct audit of the registered person; or

- (ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or.
 - (iii) exercise the powers of inspection, search and seizure with respect to the registered person, or
 - (iv) proceed to determine the tax and other dues of the registered person under Sections 73 or 74 of the Act.
- 6.** As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

- 7.** Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25th January under provisional assessment is 20th February.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of the consignment of goods supplied:

$$= ₹ 1,80,000 \times 18\% \times 48/365$$

$$= ₹ 4,261 \text{ (rounded off)}$$

If, in the given case, it is assumed that consequent to the final assessment order passed on 21st March, a tax of ₹ 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows:

Section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05th June) within 60 days from the date of receipt of application of refund (09th April), interest is not payable to Kulbhushan & Sons on tax refunded.



TEST YOUR KNOWLEDGE

1. *Explain the situation in which access to business premises is allowed under section 71. Also, list the records which are to be produced during access to business premises.*
2. *Explain the safeguards provided under section 69 to a person who is placed under arrest.*
3. *Who can order for carrying out 'inspection' and under what circumstances?*
4. *Who can order for search and seizure under the provisions of the CGST Act?*
5. *Describe the powers that can be exercised by an officer during a valid search.*
6. *Discuss the responsibilities of the person to whom summons has been issued.*
7. *Explain the meaning of 'arrest'.*
8. *State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act.*



ANSWERS/HINTS

1. The access to any place of business of a registered person is allowed to a proper officer who authorized by an officer of the rank of Joint Commissioner or higher for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

- (i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
 - (ii) trial balance or its equivalent.
 - (iii) statements of annual financial accounts, duly audited.
 - (iv) cost audit report, if any.
 - (v) the income-tax audit report, if any.
 - (vi) any other relevant record.
- 2.** Section 69 provides following safeguards to a person who is placed under arrest:
- (a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours.
 - (b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.
 - (c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3).
- 3.** As per section 67, an inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following to evade tax:
- i. suppressed any transaction of supply;
 - ii. suppressed stock of goods in hand;
 - iii. claimed excess input tax credit;
 - iv. contravened any provision of the CGST Act to evade tax;
 - v. a transporter or an owner/operator of a warehouse/godown/any other place has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

4. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner/an officer above his rank has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place. The Joint Commissioner/an officer above his rank empowered to authorize any officer to carry out search and seizure can himself also carry out search and seize such goods, documents or books or things.
5. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under the CGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied. In case where it is not practicable to seize any such goods, the officer can issue an order restricting the owner of the goods to not remove / part / deal with the goods except with his prior permission. The officer can also dispose of goods seized which are specified by the Government in a notification having regard to the nature of such goods.
6. A person who is issued summons is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summons upon any matter which is the subject matter of examination and to produce such documents and other things as may be required.
7. The term 'arrest' has not been defined in the CGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of a lawful warrant.

- 8.** The Commissioner can authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2) and the tax evaded / input tax credit wrongly availed or utilized or refund wrongly taken exceeds ₹ 2 crore. This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

[Circular No. 187/19/2022 GST dated 27.12.2022]



TEST YOUR KNOWLEDGE

1. *Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76.*
2. *Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74.*
3. *Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.*
4. *A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?*
5. *Briefly discuss the modes of recovery of tax available to the proper officer.*
6. *Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 73.*
7. *Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.*

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

8. *Anant & Co. self-assessed its CGST liability as ₹ 90,000 for the month of April, but failed to make the payment.*

Subsequently the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 73 for failure to pay GST and issued show cause notice on 10th August which was received by Anant & Co. on 14th August.

Anant & Co. deposited the tax along with interest on 25th August and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of ₹ 90,000) under the CGST Act.

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.



ANSWERS/HINTS

1. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

2. The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:
 - (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or within 2 years and 9 months from the date of erroneous refund.
 - (ii) In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or within 4 years and 6 months from the date of erroneous refund.
3. The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 are as under:
 - (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to or within 3 years from the date of erroneous refund. [Section 73(10)].
 - (ii) In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to or within 5 years from the date of erroneous refund. [Section 74(10)].
4. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].
5. The proper officer may recover the dues in following manner:
 - (a) Deduction of dues from the amount owned by the tax authorities payable to such person.

- (b) Recovery by way of detaining and selling any goods belonging to such person;
 - (c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
 - (d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
 - (e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
 - (f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
 - (g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
 - (h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].
- 6.** As per section 73, a show cause notice can be issued by the proper officer if it appears to him that:
- tax has not been paid; or
 - tax has been short paid; or
 - tax has been erroneously refunded; or
 - input tax credit has been wrongly availed or utilized,
- for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax.
- The notice should be issued at least 3 months prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter [Sub-section (2) of section 73].

The order referred herein has to be passed within three years from the due date for furnishing the annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund [Sub-section (10) of section 73].

Thus, the time-limit for issuance of show cause notice is 2 years and 9 months from the due date of filing annual return for the financial year to which the demand pertains or within 2 years and 9 months from the date of erroneous refund. As per section 44(1), the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

7. The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said

amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

8. Due date for payment of tax for the month of April is 20th May.

As per section 73, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

- (i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or
- (ii) ₹ 10,000,

whichever is higher, is payable by him under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

Hence, the stand taken by the Department that penalty will be levied on Anant & Co. is correct, but the amount of penalty of ₹ 45,000 under CGST Act is not correct.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 came into force from 01.08.2019. However, the amendments made in section 2(4) of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the date of printing of this material. Therefore, the applicability or otherwise of such amendment for May 2024 and/or November 2024 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions of section 2(4) are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
<p>Section 2(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;</p>	<p>Section 2(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;</p>	<p>The definition of adjudicating authority proposed to be amended to exclude the proposed National Appellate Authority for Advance Ruling from the purview of adjudicating authority.</p>

Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

B. Change in the constitution of the firm or AOP [Section 94(2)]:

- Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

C. Dissolution of firm/AOP or partition of HUF [Section 94(3)]:

- The provisions of section 94(1) shall, so far as may be, apply where the taxable person, being a firm/AOP is dissolved or where the taxable person, being an HUF, has effected partition with respect to the business carried on by it and accordingly references in that subsection to discontinuance shall be construed as reference to dissolution or to partition.

Explanation — For the purposes of this Chapter, —

- (i) **A Limited Liability Partnership** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 **shall also be considered as a firm.**
- (ii) **Court:** means the District Court, High Court or Supreme Court.



TEST YOUR KNOWLEDGE

1. *Avataar Industries, a registered person under GST, has sold whole of its business to Rolex Manufacturers. Determine the person liable to pay GST, interest or any penalty under GST law [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.*
2. *ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 86.*

3. *A person, liable to pay GST, interest and penalty under GST law, dies. Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.*
4. *In the question 3. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.*
5. *What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?*
6. *Discuss the liability to pay tax in case of an amalgamation/merger, under section 87.*
7. *Discuss the liability to pay tax, interest or penalty on death of a person liable to pay tax, interest or penalty as per the provisions of section 93(1).*
8. *With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?*
9. *Explain the provisions relating to liability for GST in case of company in liquidation (section 88).*
10. *Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/ IGST/ SGST Act.*



ANSWERS/HINTS

1. Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay

GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

2. As per provisions of Section 86, where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

3. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.
4. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.
5. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/Official Trustee/Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.
6. Section 87 stipulates that when two or more companies are amalgamated/merged in pursuance of an order of court or Tribunal or otherwise and the

order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied/ received any goods and/or services to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

For the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

7. As per provision of Section 93(1), save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- ❑ **Business is continued after his death:** if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.
- ❑ **Business is discontinued after his death:** if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

8. Section 90 explains the liability of partners of firm to pay tax as under:-

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm: Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement: Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

9. The provisions relating to liability for GST in case of company in liquidation provided under section 88 are:-
- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
 - The Commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
 - He shall communicate the details of amount to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.
 - When any private company is wound up and any tax, interest or penalty determined under the CGST Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.

However, director shall not be liable if he proves to the satisfaction of the Commissioner that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

10. Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing. Such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner [Section 90].

falsifying financial records is an offence under section 122(1)(x). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

5. GST implications on Mr. X

Mr. X, being a consultant of A Ltd., had adequate knowledge of the fraud and wilful misrepresentation of the facts in terms of maintaining the financial records and submission of information in GST returns. In fact, Mr. X himself was filing the GST returns and was aware of the fake invoices and ineligible input tax credit availment by the companies. Mr. X shall be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant undertakes the assignment of issuing relevant certificates to the bank thereby certifying the turnover of A Ltd. and B Ltd., he may be held guilty of professional misconduct. Further, he shall also be liable to a penalty in terms of the provisions of 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.



TEST YOUR KNOWLEDGE

1. *What is the quantum of penalty for an offence mentioned under section 122(1), 122(1A) and section 122(2)?*
2. *Mr. X, an unregistered person under GST, purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. A disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by passing an order without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge the order passed by Department?*
4. *Examine the implications as regards the bailability and quantum of punishment*

on prosecution, in respect of the following cases pertaining to the month of December under CGST Act, 2017-

- (i) 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
- (ii) 'Y' collects ₹ 550 lakh as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the Court.

5. Discuss the cognizable and non-cognizable offences under section 132?
6. Bindusar CEO of Ashoka Solution Ltd is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solution Ltd in an enquiry conducted on said company. Determine the amount of penalty if any that may be imposed on Bindusar under the CGST Act, 2017 if he fails to appear before the central tax officer.



ANSWERS/HINTS

1. Section 122(1) provides that any taxable person who has committed any of the specified offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:
 - (a) ₹ 10,000/-; or
 - (b) An amount equivalent to, any of the following (Applicable as the case may be) –
 - (i) Tax evaded; or
 - (ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or
 - (iii) Tax not collected under section 52 or short collected or collected

but not paid to the Government; or

- (iv) Input tax credit availed of or passed on or distributed irregularly;
or
- (v) Refund claimed fraudulently

Further, section 122(1A) provides that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Moreover, section 122(2) provides that if any registered person who supplies any goods and/or services on which any tax has not been paid or short paid or erroneously refunded or where the ITC has been wrongly availed or utilized:-

- (i) for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall be liable to a penalty of ₹ 10,000 or 10% of the tax due from such person, whichever is higher.
- (ii) for reason of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ₹ 10,000 or the tax due from such person, whichever is higher.

2. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126. Accordingly—

- no penalty is to be imposed without affording an opportunity of being heard to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,

- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since the order suffers from lack of clarity about nature of breach which has taken place and about applicable law under which penalty has been imposed, such order passed by the department should be challenged.

4. (i) Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1).

In the present case, failure to deposit the tax ₹ 4 lakh (₹ 245 lakh – ₹ 241 lakh). As the amount of failure does not exceed ₹ 200 lakh therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment as per section 132(1).

Further, falsification of financial records by 'X' is a specified offence as per section 132(1)(d) and punishable with imprisonment upto 6 months or with fine or both as per clause (iv) of section 132(1) assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017 and the said offence is bailable in terms of section 132(4).

- (ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d) read with clause (i) of section 132(1).

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh - ₹ 50 lakh), 'Y' is punishable with an imprisonment for a term which may extend to 5 years and with fine. It has been assumed that amount of ₹ 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax.

Such offence is non-bailable in terms of section 132(5).

If 'X' and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017.

Such imprisonment shall also be of at least 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

- 5.** As per section 132(5), following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilised or refund wrongly taken exceeds ₹ 5 crores, namely:
- (a) Supply without issuance of invoice with the intention to evade tax
 - (b) Issuance of any invoice/ bill without supply leading to wrongful availment/ utilisation of ITC or refund of tax
 - (c) Availment of ITC using invoice/ bill against which no supplies have been made or fraudulent availment of ITC without any invoice or bill.
 - (d) Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

Further, section 132(4) provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences specified as aforesaid.

- 6.** Sec 122(3)(d) of the CGST Act stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Bindusar under the CGST Act, 2017 in the given case.

- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the Act; or
- (d) an order passed under section 80 (payment of tax in instalments).



TEST YOUR KNOWLEDGE

1. *Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.*
2. *Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.*
3. *With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?*
4. *With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.*
5. *The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.*
6. *In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹ 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.*

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, determine the amount of pre-deposit to be made by the company for filing the said appeal.
7. *With reference to the provisions of section 121, specify the orders against which no appeals can be filed.*

8. *Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.*

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

9. *Pursuant to audit conducted by the tax authorities under section 65, a show cause notice was issued u/s 74 of the CGST Act to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22nd August) confirming a tax demand of ₹ 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under relevant provisions of CGST Law.*

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:

- (1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?*
 - (2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?*
 - (3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue.*
10. *With reference to the provisions of section 120, list the cases in which appeal is not to be filed and also specify other relevant provisions in this respect.*
11. *XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 1st November under section 73 wherein it was decided as follows:*

CGST+SGST due	₹ 6,00,000
Interest	@ 18% p.a. for number of delayed days
Penalty	₹ 60,000

The taxpayer filed an appeal before the Appellate Authority on 26th November. Determine the amount of pre-deposit to be made by the company for filing the appeal if it disagrees with the entire tax demanded.

Whether your answer would be different, if the taxpayer appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order?



ANSWERS/HINTS

- Yes, any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax amount, subject to a maximum of ₹ 25 crore. (₹ 50 crore in case of IGST) is paid as pre-deposit by the appellant.

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Further, no appeal can be filed against the following orders in terms of section 121:-

- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- an order pertaining to the seizure or retention of books of account, register and other documents; or

- (c) an order sanctioning prosecution under the Act; or
- (d) an order passed under section 80 (payment of tax in installments).

2. Section 107(2) provides that Department can file a “review application/appeal” with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

3. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—
- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, subject to a maximum of ₹ 25 crore. (₹ 50 crore in case of IGST)

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

- (b) 20% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 50 crore (₹ 100 crore in case of IGST), in relation to which appeal has been filed.

The above limits are applicable for the pre-deposits to be made under the CGST Act. Equal amount of pre-deposit is payable under the respective SGST Act as well.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

- 4. Section 2(99) defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the person concerned. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The "revisional authority" shall not revise any order if-

- (a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- (b) the period specified under section 107(2) has not yet expired or more than 3 years have expired after the passing of the decision or order sought to be revised.
- (c) the order has already been taken up for revision under this section at any earlier stage.
- (d) the order is a revisional order

5. The statement is incorrect.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order,

does not exceed ₹ 50,000.

6. Section 107(6) read with section 20 of the IGST Act provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 50 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 50 crore (for tax in dispute) where IGST demand is involved.

In the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

(i) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore]

or

(ii) ₹ 50 crore,

whichever is less.

= ₹ 28 crore.

Further, section 112(8) provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 100 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

(i) ₹ 56 crores [20% of the amount of tax in dispute, viz. 280 crores]

or

(ii) ₹ 100 crores,

whichever is less.

= ₹ 56 crores.

7. As per section 121, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:—

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the CGST Act; or

(d) an order passed under section 80 (payment of tax in instalments).

8. As per section 117(1), an appeal against orders passed by the **State Benches** of the Tribunal would lie to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the **Principal** Bench of the Tribunal would lie to the Supreme Court and not High Court. As per section 109(5) of the Act, only the **Principal** Bench of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the **Principal** Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

9. (1) An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/ UTGST Act is appealable before the Appellate Authority [Section 107(1)]. Thus, Home Furnishers

can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1)]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22nd November. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

- (2) GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and *vice versa*. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws.

GST law also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].

- (3) Home Furnishers' view is not correct in law. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—
 - (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore*.

**Equivalent amount is required to be deposited with respect to SGST liability.*

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of ₹ 50,00,000 which is ₹ 5,00,000 (i.e. ₹ CGST 2,50,000 and SGST ₹ 2,50,000).

10. (1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.
- (2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- (3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- (4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.
11. Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays*:-
- (a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- (b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore, in relation to which the appeal has been filed.

**Equivalent amount is required to be deposited with respect to SGST liability.*

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 (i.e. CGST ₹ 30,000 and SGST ₹ 30,000).

However, when XY Company admits the liability of only ₹ 2,00,000 (CGST + SGST) and disputes the balance tax demanded of ₹ 4,00,000, it has to make a pre-deposit of:

- (i) ₹ 2,00,000 + ₹ 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- (ii) 10% of ₹ 4,00,000 which is ₹ 40,000.

It may be noted that the Appellate Tribunal was not constituted till 30.04.2023. This aspect needs to be borne in mind while reading the examples and questions and answers relating to Appellate Tribunal given in the Chapter.

however not treated as civil court for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973.

- ❖ Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The AAR and AAAR also have the power to regulate their own procedure.



TEST YOUR KNOWLEDGE

1. Which are the questions for which advance ruling can be sought?
2. What is the objective of having a mechanism of Advance Ruling?
3. To whom will the Advance Ruling be applicable?
4. What is the time period for applicability of Advance Ruling?
5. Can an advance ruling given be nullified?
6. Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and (ii) the place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:

- (i) The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?
- (ii) Ranjan is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Ranjan's apprehension is correct?

(iii) *The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?*

(iv) *Sambhav - Ranjan's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Ranjan proposes to supply at the same commercial level that Ranjan proposes to adopt.*

He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi. Whether Sambhav can do so?

7. *Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98.*
8. *Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR), with reference to sections 100 and 101.*
9. *Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.*



ANSWERS/HINTS

1. Advance Ruling can be sought for the following questions:
 - (a) classification of any goods or services or both;
 - (b) applicability of a notification issued under provisions of the GST Act(s);
 - (c) determination of time and value of supply of goods or services or both;
 - (d) admissibility of input tax credit of tax paid or deemed to have been paid;
 - (e) determination of the liability to pay tax on any goods or services under the Act;
 - (f) whether applicant is required to be registered under the Act;

- (g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.
2. The broad objective for setting up such an authority is to:
 - (i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant;
 - (ii) helps taxpayer in financial planning and making new investments
 - (iii) attract Foreign Direct Investment (FDI);
 - (iv) reduce litigation;
 - (v) pronounce ruling expeditiously in transparent and inexpensive manner
 3. The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in section 97(2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.
 4. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.
 5. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.

6. (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c)]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 103(2) stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.
- (iii) No, the tax advisor's view is not correct. As per section 100, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/ jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

- (iv) Section 103 provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

7. The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 is as under:-

1. Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.
 2. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.
 3. Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
 4. If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant.
 5. If the application is admitted, the AAR shall pronounce its ruling on the question specified in the application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.
 6. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.
 7. If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue
 8. The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.
 9. A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.
- 8.** Yes, the concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR) within 30 days [extendible by another 30 days] from the date on which such ruling is communicated to him in the prescribed form and manner.

The AAAR must pass an order confirming or modifying the ruling appealed against within a period of 90 days of the filing of an appeal, after hearing the parties to the appeal.

If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal. A copy of the advance ruling pronounced by the AAAR is sent to applicant, concerned officer, jurisdictional officer and to the Authority.

9. As per section 97(2), advance ruling can be sought for the following questions:-
- (a) classification of any goods or services or both
 - (b) applicability of a notification issued under the CGST Act
 - (c) determination of time and value of supply of goods or services or both
 - (d) admissibility of input tax credit of tax paid or deemed to have been paid
 - (e) determination of the liability to pay tax on any goods or services or both
 - (f) whether applicant is required to be registered
 - (g) whether any particular activity with respect to any goods and/or services, amounts to/results in a supply of goods and/or services, within the meaning of that term.

CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.) has held that where the legislature has stipulated the period of limitation in terms of months, such a stipulation can only mean a calendar month and not 30 days.



TEST YOUR KNOWLEDGE

1. Briefly explain how the GST compliance rating score is determined.
2. When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.
3. Explain the provisions relating to rectification of errors apparent on the face of record under section 161.
4. Write a short note on Anti-profiteering measure.
5. Elaborate the functions of Anti-profiteering Authority.
6. State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, on the taxable person or any other person to whom it is intended.
7. Section 158(1) lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act is confidential and cannot be disclosed.

Is there any exception to this rule? Discuss in brief.

8. Explain the scope of circulars and instructions issued by the Board.
9. 'The time limits provided under the CGST Act cannot be extended.'

Do you agree with the statement? Give your views with reference to section 168A.



ANSWERS/HINTS

1. As per section 149(2), the GST compliance rating is determined on a scale of ten on the basis of prescribed parameters.

2. When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)].

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

3. Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be made after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

4. As per section 171, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. **Competition Commission of India (CCI)** may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. **Henceforth, all investigations, based on complaints filed by consumers, will be done by the Directorate General of Anti-profiteering (DGAP) which will then submit a report to CCI.**

5. The authority shall discharge the following functions, namely:-

- (i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- (ii) to identify the taxpayer who has not passed on the benefit
- (iii) to order
 - (a) reduction in prices
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be.

If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;
 - (c) imposition of penalty
 - (d) cancellation of registration
- (iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

6. Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

- (a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or
- (b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or
- (c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or
- (d) By making the same available at common portal; or

- (e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or
 - (f) If none of the above modes is practicable then by Affixing at last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority concerned.
- 7.** Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3). Such specific purposes are given in brief hereunder:
- (i) For prosecution
 - (ii) For carrying out the objects of the CGST Act
 - (iii) For service of notice or recovery of demand
 - (iv) For furnishing information to Court in a proceeding where Government is a party
 - (v) For audit of tax receipts or refunds
 - (vi) For inquiry into the conduct of a GST officer
 - (vii) For enabling levy, realisation of any tax or duty
 - (viii) In lawful exercise of powers
 - (ix) For enquiry into a charge of misconduct by any professional
 - (x) For data entry on automated system
 - (xi) For fulfilling the requirement under any other law and in public interest.
- 8.** Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

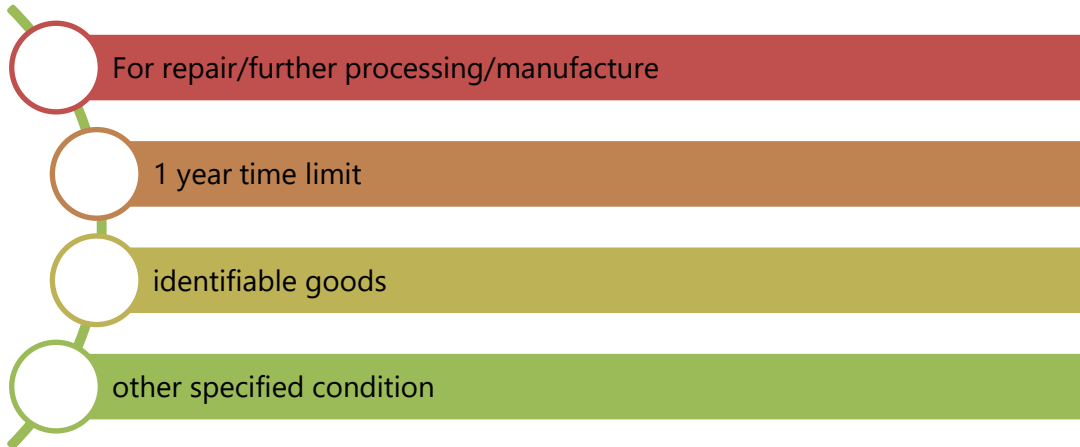
The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However,

in case such circular states something contrary to the law, the law shall prevail over the circular.

9. The statement is not correct.

The Government has power to extend the time limits provided under the CGST Act. However, such powers are not unbridled powers. Section 168A empowers the Government to extend the time limits only when the actions cannot be completed or complied with due to *force majeure*. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

Exemption from customs duty on imported goods used for inward processing of goods [Section 25A]/ re-imported goods used for outward processing [Section 25B]



TEST YOUR KNOWLEDGE

1. What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?
2. *M/s Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer's claim for exemption. Examine briefly whether the department's action is sustainable in law.*
3. *M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.*

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.

Do you think the demand of the Customs Department is valid in law.

4. *Referring to section 25 of the Customs Act, 1962, discuss the following:*
 - (i) *Special exemption*
 - (ii) *General exemption*
5. *Write a brief note on the following with reference to the Customs Act, 1962:*
 - (i) *Remission of duty on imported goods lost*
 - (ii) *Pilfered goods*
6. *Distinguish between Pilfered goods and Lost/destroyed goods*
7. *Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.*
8. *Write a brief note on stages of imposition of taxes and duties.*
9. *Discuss the provisions relating to denaturing or mutilation of goods.*
10. *Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.*
11. *Briefly explain the following with reference to the provisions of the Customs Act, 1962:*
 - (i) *Indian customs waters*
 - (ii) *India*
12. *Distinguish between Indian territorial waters and Indian custom waters.*
13. *Write a brief note on the constitutional provisions governing the levy of customs duties.*

14. Examine the validity of the following statements:
- (a) A beneficial owner of imported goods is a person on whose behalf the goods are being imported.
 - (b) Customs area does not include a warehouse.
 - (c) Customs station includes international courier terminal.
15. Rock & Rock India Ltd. imported a consignment from U.S.A (by sea). The value of consignment was ₹ 7,50,000 and total duty payable was ₹ 1,50,000. Company filed bill of entry for home consumption but before inspection and clearance for home consumption it found that the goods were damaged. On filing a representation to the Customs Department, proper officer refused the claim for abatement because goods were already unloaded. The proper officer is in agreement with the claim that the value of goods has come down to only ₹ 1,50,000. Examine the issue with reference to the relevant statutory provisions and calculate the amount of total duty payable: Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹ 7,00,000 ?



ANSWERS/HINTS

1. Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.
- The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November.
- However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, However limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;**
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;**
- (c) privileges of constitutional authorities;**
- (d) schemes under the Foreign Trade Policy;**
- (e) the Central Government schemes having validity of more than two years;**
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;**
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.**

The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

2. This issue has been addressed by the Supreme Court in the case of *Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC)*. The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the

essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

3. The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A44 (SC)* wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
 - (ii) such power generated has been used for manufacturing goods for export, and
 - (iii) only the surplus power has been sold, as power cannot be stored.
4. (i) **Special Exemption:** As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100. This type of exemption is called as *ad hoc* exemption. Order under section 25(2) is not required to be published in the Official Gazette.
 - (ii) **General Exemption:** As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;**
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;**
- (c) privileges of constitutional authorities;**
- (d) schemes under the Foreign Trade Policy;**
- (e) the Central Government schemes having validity of more than two years;**
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;**
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.**

Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

5. (i) **Remission of duty on imported goods lost:** Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.

- (ii) **Pilfered goods:** Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty on the said pilfered goods unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

6.

	Pilfered goods	Lost/Destroyed goods
1.	Covered by section 13	Covered by section 23(1)
2.	Importer is not liable to pay duty on these goods	Duty paid on such goods to be remitted
3.	Department gets compensation from the custodian [Section 45(3)]	No such compensation
4.	Petty theft by human being	Loss/Destruction by fire, flood etc (Act of God)
5.	Restoration possible	Restoration is not possible
6.	Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence may be at any time before clearance for home consumption
7.	Occurrence in warehouse not recognized	Occurrence in warehouse is recognized
8.	Duty need not be calculated	Duty should be calculated for determining the remission amount

9.	No need to prove pilferage. It is quite obvious	Should be proved and remission sought for
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7. The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

- (i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid at the time of export.
- (ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

- (a) the re-importation is done within 3 years or 5 years if time is extended.
- (b) the exported goods and re-imported goods must be the same.

In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus dated 30.06.2017]

- (iii) When exported goods come back for repairs and re-export, the re-imported goods other than the specified goods can avail exemption from paying of import duty subject to the following conditions:

- (i) the re-importation is for repairs only
- (ii) the time limit is 3 years. In case of Nepal, such time-limit is 10 years.
- (iii) the goods must be re-exported after repairs
- (iv) the time limit for export is 6 months (extendable to one year).
- (v) certain goods, listed in the notification, are not covered by this exemption.

[Notification No. 158/95 Cus. dated 14.11.1995 as amended vide Notification No. 60/2018 Cus dated 11.09.2018]

8. [Refer para 1-Unit II]

9. [Refer para 4 -Unit II]

10. [Refer para 4 -Unit II]

11. [Refer para 3 -Unit I]

12. [Refer para 3 -Unit I]

13. [Refer para 2 -Unit I]

14. (a) **The statement is valid.** Section 2(3A) defines beneficial owner to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

(b) **The statement is not valid.** The definition of customs area includes within its ambit a warehouse too.

The customs area is defined to mean the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

(c) **The statement is valid.** International courier terminal and foreign post office are included within the scope of customs station as defined under section 2(13) of the Customs Act, 1962.

As per section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

15. The two different situations here are (i) damage after unloading and (ii) deterioration after unloading.

The abatement of duty is allowed **under section 22(b)** where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that, *inter alia*, any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination, on account of any accident not due to any wilful act, negligence or default of the importer.

Thus, in view of the above-mentioned provisions, the stand taken by the proper officer of refusing the claim for abatement is not valid in law.

The duty to be charged on the damaged goods shall be reduced in proportion to the reduction in the value of goods on account of damage.

Thus, in the given case, the amount of total duty payable

$$= [\text{₹ } 1,50,000 / \text{₹ } 7,50,000] \times \text{₹ } 1,50,000 = \text{₹ } 30,000$$

The abatement of duty is allowed in case of deterioration only if such deterioration occurs before or during the unloading of goods. Since in this case, imported goods have deteriorated before clearance for home consumption but after unloading, abatement of duty will not be allowed and full duty will have to be paid.



TEST YOUR KNOWLEDGE

1. With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.
2. With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government.
3. When shall the safeguard measures under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.
4. What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?
5. Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".
6. Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Assessable value of Sodium Nitrite imported from a developing country from 26 th August, 2022 to 25 th August, 2023 (both days inclusive)	₹ 30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax	12%
Social welfare surcharge	10%

Note: Ignore GST compensation cess and Agriculture infrastructure and development cess.

7. Differentiate between protective duty and safeguard measures.
8. Briefly examine the nature and significance of the levy of anti-dumping duty under the Customs Tariff Act, 1975.
9. Chaintop Industries has challenged the imposition of anti-dumping duty retrospectively on the grounds that it is unconstitutional. Explain whether it would succeed in its contention.
10. Determine the total duties payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price (exclusive of duties) of ₹ 25 lakh. It has been notified by the Central Government that share of imports of rubber from the developing country against total imports to India exceeds 5%. Safeguard duty notified on this product is 30%, IGST u/s 3(7) is 12% and BCD is 10%. Ignore agriculture infrastructure and development cess.
11. During the year 2023, the customs authorities have noticed that there is an increased quantity of Product XYZ being imported into the country. Determine whether the Central Government should consider levying safeguard duty or anti-dumping duty with appropriate reasons. Also enumerate any exemptions/reliefs available from such duty.



ANSWERS/HINTS

1. According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section 9A(2) of the said Act.
2. As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:
 - (i) altering the description or name or composition of the article subject to such anti-dumping duty,

- (ii) import of such article in an unassembled or disassembled form,
- (iii) changing the country of its origin or export, or
- (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

In such cases, investigation can be carried out by Central Government and then anti dumping can be imposed on such articles.

3. The safeguard measures under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:
 - (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
 - (ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
 - (iii) Articles imported by a 100% EOU or units in a Special Economic Zone unless it is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard measures shall be applied on that portion of the article so cleared or so used as was leviable when it was imported into India.
4. The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:
 - (i) At the time of importation, he should make a specific claim for the preferential rate.
 - (ii) He should also claim that the goods are produced or manufactured in such preferential area.
 - (iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.

(iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

5. Section 8A of Customs Tariff Act, 1975 provides that the where the Central Government is satisfied that the basic customs duty leviable on any article should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification amend the First Schedule of the Customs Tariff to increase the import duty leviable on such article to such extent as it thinks necessary.

6. **Computation of customs duty and integrated tax payable thereon**

Particular	Amount(₹)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on ₹30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(2) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x ₹3,00,000	30,000
Total	42,30,000
Integrated tax (₹42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (₹3,00,000 + ₹9,00,000+ ₹30,000+ ₹5,07,600)	17,37,600

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

7. [Refer para 7 and 10]

8. [Refer para 12]

9. Section 9A(3) of the Customs Tariff Act, 1975 provides that the anti-dumping duty can be imposed with retrospective effect provided the Government is of the opinion that:-

- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
- (b) the injury is caused by massive dumping of an article imported in a relatively short time, which in the light of timing and volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Chaintop Industries would succeed in its contention only if all of the above conditions are not satisfied.

10. Computation of total duties payable under the Customs Act

S. No.	Particulars	(₹)
1	Landed price	25,00,000
2	Add: Basic customs duty @ 10%	2,50,000
3	Add: Safeguard duty @ 30% on ₹ 25,00,000	7,50,000
4	Add: Social welfare surcharge (SWS) @ 10 % on ₹ 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	Add: Integrated tax 12% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	4,23,000
6	Total customs duties and tax payable [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	14,48,000

11. In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty.

Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here.

However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

- (a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country \leq 3% of the total imports of that article into India.
- (b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with less than 3% import share taken together \leq 9% of the total imports of that article into India.
- (c) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless specifically made applicable;
- (d) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless the article imported is either cleared as such/ used in the manufacture of any goods that are cleared, into DTA.
- (e) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2023 TO BE NOTIFIED

Few amendments made in the Customs Act, 1962 and Customs Tariff Act, 1975 vide the Finance Act, 2023 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the date of printing of this material. Therefore, the applicability or otherwise of such amendment for May 2024 and/or November 2024 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of sections 9, 9A and 9C of the Customs Tariff Act are compared with the provisions as amended by the Finance Act, 2023.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2023 ²	Remarks
9	<p><u>Sub-Section (6)</u> Provided that if the Central Government, in a review, is of the opinion.....from the date of order of such extension:.</p>	<p><u>Sub-Section (6)</u> Provided that if the Central Government, on consideration of a review, is of the opinion.....from the date of order of such extension:.</p>	Sections 9, 9A and 9C of the Customs Tariff Act to be amended so as to omit certain words therein and to clarify that the determination or review of safeguard duty or of countervailing
	<p><u>Sub-Section (7)</u> The amount of any such subsidy as referred to in sub-section (1) or sub-</p>	<p><u>Sub-Section (7)</u> The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time</p>	

² All amendments given in the table would be effective retrospectively, w.e.f. 01.01.1995.

	<p>section (2) shall, from time to time, be ascertained and determined by the Central Government, ...under this section.</p>	<p>to time, be ascertained by the Central Government,.....under this section.</p>	<p>duty or of anti-dumping duty are to be done by an authority in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B of the said Act.</p>
9A	<p>Sub-Section (5) Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty.....date of order of such extension :</p>	<p>Sub-Section (5) Provided that if the Central Government, on consideration of a review, is of the opinion that the cessation of such dutydate of order of such extension :</p>	
	<p>Sub-Section (6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry..... such anti-dumping duty.</p>	<p>Sub-Section (6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained by the Central Government, after such inquiry such anti-dumping duty.</p>	
9C	<p>Sub-Section (1) An appeal against the order of determination or reviewthat article.</p>	<p>Sub-Section (1) An appeal against the determination or reviewthat article.</p>	

<p><u>Sub-Section (2)</u> Every appeal under this section shall be filed within ninety days of the date of order under appeal:</p>	<p><u>Sub-Section (2)</u> Every appeal under this section shall be filed within ninety days of the date of determination or review under appeal:</p>
<p><u>Sub-Section (3)</u> The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.</p>	<p><u>Sub-Section (3)</u> The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the determination or review appealed against.</p>
<p><u>Sub-Section (5)</u> Every appeal under sub-section (1) shall be heard by a Special Benchtechnical member.</p>	<p><u>Sub-Section (5)</u> Every appeal under sub-section (1) shall be heard by a Special Bench.....technical member. <i>Explanation</i> <i>For the purposes of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B,9,9A and 9B.</i></p>



TEST YOUR KNOWLEDGE

1. Briefly explain the provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles.
2. What is the purpose of including General Rules of Interpretation of First Schedule in Customs Tariff? Do they form part of the Tariff Schedule? Explain the Akin Rule of interpretation.
3. Write a note on "Project Imports" under the Customs Tariff Act, 1975.
4. Explain rule 3 of the rules for Interpretation of the Customs Tariff.
5. Briefly explain the meaning of abbreviation "%" in relation to the rate of duty



ANSWERS/HINTS

1. The provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles are as under:-

If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

Reference to an article will also include the article complete or finished (or failing to be classified as complete or finished) presented un-assembled or dis-assembled.

2. The Customs Tariff has a set of six General Rules for Interpretation of the First Schedule and three General Explanatory Notes. The six General Rules of Interpretation and three General Explanatory Notes are integral part of the Tariff Schedule. The purpose of their inclusion in Customs Tariff is to standardize the manner in which the nomenclature in the schedule is to be interpreted so as to reduce classification disputes.

Rule 4 of the Rules of Interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of

the Rules of Interpretation shall be classified under the heading appropriate to the goods to which they are most akin. In other words, akin rule' is a residual rule which is to be applied when classification is not possible by applying any of the earlier rules. It is a rule of last resort.

3. Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit.

Heavy customs duty on imported machinery for projects make the initial project cost very high and project may become unviable. Hence, concept of 'project import' is introduced to bring machinery etc. required for initial setup or substantial exemption at concessional customs duty.

In a project several different items are required, each of which is importable at different rates of customs duties. Thus, this simple method is adopted, as otherwise, classifying each machinery and its parts in different heads and valuing them would have been cumbersome and would have delayed clearances, which would cause demurrages. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent Supreme Court judgement.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975.

The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

Few of the eligible projects are:

- (i) Industrial plant
- (ii) Irrigation project
- (iii) Power project
- (iv) Mining project
- (v) Oil & mineral exploration project
- (vi) Other projects as notified by the Central Government

4. The application of this rule arises when the goods consists of more than one material or substance.

When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

Rule 3(a) – Specific over general

- (i) The heading which provides the most specific description shall be preferred to headings providing a more general description.
- (ii) However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Rule 3(b) – Essential character principle: Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.

Rule 3(c) – Latter the better: When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

5. The abbreviation “%” in any column of the Schedule in relation to the rate of duty means that the duty shall be computed at the percentage specified on the value of the goods as defined in section 14 of the Customs Act.

SIGNIFICANT SELECT CASES

1. **Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?**

Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)

Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.

Supreme Court's Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.

The Headings cited in some of the case laws in this chapter may not correlate with the Headings of the present Customs Tariff as these cases relate to an earlier point of time.

Note -Case laws given in this Chapter are solely for the understanding of provisions relating to classification.



TEST YOUR KNOWLEDGE

1. Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:
 - (i) Goods of the same class or kind
 - (ii) Computed value
2. Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption, should be taken as the price at which the original importer has sold the goods?
3. Explain when are the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 be added to the value of the identical goods under rule 4.
4. Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:
 - (i) Service charges paid to canalizing agent are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.
 - (ii) Charges for "vendor inspection" on the second hand goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.
5. An importer entered into a contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

In the meanwhile, the international prices had gone up due to volatility in market and other imports during the month of August were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct, with reference to a decided case law, if any.

6. BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable.

	Particulars	Amount
(i)	Price of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of Price of machine
(v)	Materials and components supplied in UK by the buyer free of cost valued at ₹20,000	
(vi)	Insurance paid to the insurer in India	₹6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other particulars:

- (i) Inter-bank exchange rate: ₹98 per U.K. Pound.
- (ii) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ₹100 per U.K. Pound.
- (iii) Importer paid ₹5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

7. Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.
8. With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.
9. Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of exchange
CBIC	1 US \$ = ₹ 70
RBI	1 US \$ = ₹ 71

CIF value of the goods is \$ 1,50,000

Rate of basic custom duty is 10%

Rate of social welfare surcharge is 10%

Integrated tax is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

10. ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US\$, freight paid is 1,200 US\$ and insurance cost is 1,800 US\$. The banker realizes the payment from importer at the exchange rate of ₹ 61 per US\$. Central Board of Indirect taxes and Customs notifies the exchange rate as ₹ 70 per US\$ while rate of exchange notified by RBI is ₹ 72 per US\$. ABC Industries Ltd. expends ₹ 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

11. Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

		US \$
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	800
(iii)	Handling charges paid for loading the machine in the ship	50
(iv)	Freight charges from exporting country to India	5,000
(v)	Buying commission paid by the importer	100
		₹
(vi)	Ligherage charges paid by the importer at port of importation	12,000
(vii)	Freight incurred from port of entry to Inland Container depot	60,000
(viii)	Ship demurrage charges paid at port of importation	24,000
Date of bill of entry	20 th January (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 70 per US \$)	
Date of entry inward	25 th March (Rate of BCD 10%; Exchange rate as notified by CBIC ₹ 75 per US \$)	
Integrated tax	12%	

Note: Ignore GST Compensation Cess.

12. Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and

demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

13. *M/s Impex imported some consignment of goods on 1st June. A bill of entry for warehousing of goods was presented on 5th June and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 1st July, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 1st August claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.*

Explain with reference to the provisions of the Customs Act, 1962:

- (i) the rate of duty applicable for clearance for home consumption in this case.*
 - (ii) whether the rate of exchange on 1st August could be adopted for purpose of conversion of foreign currency into local currency?*
14. *Differentiate between deductive value and computed value.*
15. *What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*
16. *Enumerate the various costs and services that are to be added under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the "transaction value".*

17. In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:
- Similar goods
 - Identical goods
18. Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.
19. Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:

Particulars	US \$
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	250
Loading and handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Though the aircraft arrived on 22nd August, the bill of entry for home consumption was presented by Mr. X on 20th August.

The other details furnished by Mr. X are:

	20 th August	22 nd August
Rate of basic customs duty	20%	10%
Exchange rate notified by CBIC	₹ 70 per US\$	₹ 72 per US\$
Exchange rate prescribed by RBI	₹ 71 per US\$	₹ 72 per US\$
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%	12%

Compute-

- (i) value of product 'Z' for the purpose of levying customs duty
 (ii) customs duty and tax payable
20. An importer from Cochin imports goods from an exporter in US. The vessel carrying the goods reaches Mumbai port first and from there goods are transshipped to Cochin port.

Determine the assessable value of the imported goods under the Customs Act, 1962 from the following particulars:

S.No.	Particulars	Amount
(i)	Cost of the machine at the factory of the exporter	US \$ 20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	US \$ 1,000
(iii)	Handling charges paid for loading the machine in the ship	US \$ 100
(iv)	Buying commission paid by the importer	US \$ 100
(v)	Freight charges from exporting country to India	US \$ 2,000
(vi)	Actual insurance charges paid are not ascertainable	---
(vii)	Charges for design and engineering work undertaken for the machine in US	US \$ 5,000
(viii)	Unloading and handling charges paid at the place of importation	₹ 1,500
(ix)	Transport charges from Mumbai to Cochin port	₹ 25,000
(x)	Exchange rate to be considered: 1\$ = ₹ 70	

21. ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November.

The following particulars are made available:

S. No.	Particulars	Amount in Japanese Yen (¥)
(i)	Cost upto port of exportation incurred by exporter	6,00,000
(ii)	Loading charges at port of exportation	25,000
(iii)	Freight charges from port of export to port of import in India.	1,00,000

Following additional amounts paid by ABC Industries Ltd:-

S. No.	Particulars	Amount in Indian rupees (₹)
(i)	Designing charges, necessary for such machine, paid to consultancy firm in New Delhi	8,00,000
(ii)	Commission paid (not the buying commission) to local agent of exporter.	1,25,000
(iii)	Actual landing charges paid at the place of importation.	15,000
(iv)	Actual insurance charges paid to the place of importation are not ascertainable.	-
(v)	Lighterage charges paid at the port of importation	20,000

Other Information :

(i)	Rate of basic customs duty is 10%
(ii)	Rate of social welfare surcharge is 10%
(iii)	Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 12%.
(iv)	Ignore GST compensation cess.
(v)	Rate of exchange to be taken is 1 Japanese Yen (¥) = ₹0.71

Arrive at the total customs duty, including integrated tax payable under section 3(7) of the Customs Tariff Act, 1975 with appropriate working notes.

22. Mr. X imported certain goods from a related person Mr. Q of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests customs authorities to determine value accordingly as per rule 8. The relevant data are

1. Cost of materials incurred by Mr. Q \$ 2000
2. Fabrication charges incurred by Mr. Q \$ 1000
3. Other chargeable expenses incurred by Mr. Q \$ 400
4. Other indirect costs incurred by Mr. Q \$ 250
5. Freight from Mr. Q 's factory to US port \$ 250
6. Loading charges at US port \$ 100
7. Normal net profit margin of Mr. Q is 20% of FOB
8. Air freight from US port to Indian port \$ 1,500
9. Insurance from US port to Indian port \$ 50
10. Exchange rate ₹ 70 per \$

The customs authorities are of the opinion that since value as per rule 7 can be determined at ₹ 4,00,000, there is no need to apply rule 8.

Can the request of Mr. X be legally acceptable? If so, compute the assessable value under the Customs Act, 1962.



ANSWERS/HINTS

1. (i) As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable.

As per rule 8, subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of –

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

2. Section 14 of the Customs Act provides that the value of the imported goods shall be the transaction value of goods which is the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. The sale of goods after warehousing them in India cannot be considered a sale for export to India. It cannot be stated that the export of goods is not complete even after the imported goods were cleared for warehousing in the country of import. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14. This has been clarified vide *Circular No. 11/2010 Cus. dated 03.06.2010*.

Note: The above is only applicable for levy of BCD and Social welfare surcharge. IGST is leviable as per Section 3(8A) of the Customs Tariff Act, 1975.

3. As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both. According to rule 4(2) where costs and charges referred to in rule 10 are

included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per rule 10.

4. (i) The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission [*Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)*].
- (ii) The statement is valid. As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value.

Thus, charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [*Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)*].

5. No, the contention of the Department is not correct.

The facts of the given case are similar to the case of *CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (SC)*. The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US \$ 435 CIF/metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties.

The Supreme Court pointed out that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market.

Further, there was no allegation regarding the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the 'transaction value'.

6. Computation of assessable value of machine imported by BSA & Co.

Particulars	Amount (£)
Price of the machine	10,000
Add: Engineering and design charges paid in UK [Note 1]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of Price of machine) [Note 1]	<u>2,000</u>
Total	<u>12,500</u>
	Amount (₹)
Value in Indian currency [£12,500 x ₹100] [Note 2]	12,50,000
Add: Materials and components supplied by the buyer free of cost [Note 1]	<u>20,000</u>
FOB	12,70,000
Add: Freight [Note 3]	2,54,000
Insurance paid to the insurer in India [Note 1]	<u>6,000</u>
CIF value	15,30,000
Assessable value	<u>15,30,000</u>

Notes:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].

2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.
 3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
 4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
 5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
7. As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

Therefore, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle will be the date of the arrival of the vehicle.

8. As per explanation to rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value may include:-
- (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;

- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- (f) the fraudulent or manipulated documents.

9. Computation of total custom duty and integrated tax payable

Particulars	Amount
CIF Value	\$ 1,50,000.00
Assessable value (in ₹) = \$1,50,000 × ₹ 70 (Note -1)	₹ 1,05,00,000.00
Add: Basic custom duty @ 10% (₹ 1,05,00,000 × 10%)	₹ 10,50,000.00
Add: Social Welfare surcharge [₹10,50,000 × 10%]	₹ 1,05,000
Sub-total	1,16,55,000.00
Add: Integrated tax (₹ 1,16,55,000 × 18%) (Note-2)	₹ 20,97,900.00
Total custom duty and integrated tax payable (rounded off)	₹ 32,52,900

Notes:-

- (1) The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the customs Act, 1962].
- (2) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

10. Computation of customs duty and integrated tax payable by ABC Industries Ltd.

Particulars	Amount
CIF value	6,000 US \$
Less: Freight	1,200 US \$

Less: Insurance	1,800 US \$
FOB value	3,000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	1,800 US \$
CIF	5,400 US \$
Exchange rate as per CBIC [Note 3]	₹ 70 per US \$
Assessable value = ₹ 70 x 5,400 US \$	₹ 3,78,000
Add: Basic customs duty @ 10%	₹ 37,800
Add: Social Welfare Surcharge @ 10%	₹ 3,780
Sub-total	₹ 4,19,580
Integrated tax @ 12% of ₹ 4,19,580 [Note 5]	₹ 50,349.60
Total customs duty and integrated tax payable [₹37,800 + ₹ 3,780 + ₹ 50,349.60]	₹ 91,929.60
Total customs duty and integrated tax payable (rounded off)	₹ 91,930

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *inter alia* provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges of ₹ 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

11. Computation of customs duty and integrated tax payable on the imported goods

Particulars	US \$
Cost of the machine at the factory	20,000
Transport charges up to port	800
Handling charges at the port	<u>50</u>
FOB	<u>20,850</u>
FOB value in Indian rupees @ ₹ 70/- per \$ [Note 1]	14,59,500
Freight charges up to India [US \$ 5,000 x ₹ 70]	3,50,000
Ligherage charges paid by the importer [Note 2]	12,000
Ship demurrage charges on chartered vessels [Note 2]	24,000
Insurance charges @ 1.125% of FOB [Note 3]	<u>16,419.38</u>
CIF	18,61,919.38
<i>Add:</i> Basic customs duty @ 10% [Note 4] [a]	1,86,192
<i>Add:</i> Social Welfare surcharge @ 10% [b]	<u>18,619.20</u>
Total	20,66,730.58
<i>Add:</i> Integrated tax @ 12% of ₹ 20,66,730.58 [c] [Note 5]	2,48,007.67
Total custom duty and integrated tax payable [(a) + (b) + (c)] rounded off	4,52,819

Notes:

- (1) Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].
- (2) Cost of transport of the imported goods includes ship demurrage charges and ligherage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

- (3) Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (4) Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].
- (5) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social welfare surcharge.
- (6) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (7) Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

- 12.** The facts of the given case are similar to the case of *Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)* decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

In view of the above-mentioned judgment, contention of Kaveri Enterprises is correct.

- 13. (i)** Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented.

In the given case, since M/s Impex has filed the bill of entry for home consumption on 1st August, rate of duty is the rate prevalent on the said date viz. 30%.

- (ii) Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBIC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.

Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 5th June and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 1st August, would be adopted.

14. [Refer Para 7]

15. [Refer Para 7]

16. [Refer Para 7]

17. [Refer Para 7]

18. [Refer Para 9]

19. Computation of assessable value of product 'Z'

Particulars		Amount
Ex-factory price of the goods		8,500 US \$
Freight from factory of the exporter to load airport (airport in the country of exporter)	250 US \$	
Loading and handling charges at the load airport	250 US \$	
Freight from load airport to the airport of importation in India	<u>4,500 US \$</u>	
Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation	5,000 US \$	

<i>Add:</i> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (restricted to 20% of FOB value) [Note 1]	1,800 US \$
Insurance (actual)	<u>2,000 US \$</u>
CIF for customs purpose	12,300 US \$
Value for customs purpose	12,300 US \$
Exchange rate as per CBIC [Note 2]	₹ 70 per US \$
	Amount (₹)
Assessable value (₹ 70 x 12,300 US \$)	8,61,000
<i>Add:</i> Basic customs duty @ 10% [Note 3]	86,100
<i>Add:</i> SWS @ 10%	<u>8,610</u>
Value for the purpose of levying integrated tax [Note 4]	9,55,710
<i>Add:</i> Integrated tax @ 12%	1,14,685.2
Total duty & tax payable (rounded off)	2,09,395

Notes:

- (1) In the case of goods imported by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- FOB value in this case is the ex-factory price of the goods (8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading and handling charges at the load airport (250 US \$) which is 9,000 US \$.
- (2) Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].

- (3) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (4) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. SWS leviable on integrated tax have been exempted.

20. Computation of assessable value of imported goods

Particulars	Amount (US \$)
Price of the machine at the factory of the exporter	20,000
<i>Add:</i> Transport charges up to the port in the country of the exporter [Note 1]	1,000
Handling charges at the port in the country of the exporter [Note 1]	100
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	_____ Nil
FOB value	26,100.00
<i>Add:</i> Freight charges up to India	2,000.00
Insurance charges @ 1.125% of FOB [Note 4]	293.63
Transport charges from Mumbai to Cochin port [Note 5]	_____ Nil
CIF value	28,393.63
<i>Add:</i> Unloading and handling charges paid at the place of importation [Note 6]	_____ Nil
Assessable value	28,393.63
Assessable value in Indian rupees @ ₹ 70/ per \$	₹19,87,554.10
Assessable value (rounded off)	₹ 19,87,554

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].
- (6) As per rule 10(2) of the CVR, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods.

21. Computation of assessable value of the imported goods

	Japanese Yen
Cost upto port of exportation	6,00,000
<i>Add:</i> Loading charges at the port of exportation [Note-1]	25,000
Total in Japanese Yen	6,25,000
	₹
Total in Indian rupees @ ₹ 0.71 per Japanese Yen	4,43,750.00

Add: Commission paid to local agent of exporter [Note-3]	1,25,000.00
FOB value as per customs	5,68,750.00
Add: Freight charges from port of export to port of import in India [Note-1] [1,00,000 Japanese Yen × 0.71 = ₹ 71,000]	71,000.00
Add: Ligherage charges paid by the importer at port of importation [Note-1]	20,000
Add: Insurance charges @ 1.125% of FOB [₹ 5,68,750 × 1.125%] [Note-4]	6,398.43
CIF value	6,66,148.43
Assessable Value (rounded off)	6,66,148
Add: Basic customs duty @ 10% of ₹ 6,66,148 (rounded off) (A)	66,615
Add: Social welfare surcharge @ 10% of ₹ 66,615 (rounded off) (B)	6,662
Total	7,39,425
Add: Integrated tax @ 12% of ₹ 7,39,425 (rounded off) (C)	88,731
Total custom duty and integrated tax payable [(A) + (B) + (C)] (rounded off)	1,62,008

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)]. Further, explanation to rule 10(2), *inter alia*, clarifies that cost of transport of the imported goods includes ligherage charges.
- (2) Design and engineering work is includible in the assessable value only when the same is undertaken elsewhere than in India and necessary for the production of the imported goods [Rule 10(1) of the CVR].

- (3) Buying commission is not included in the assessable value [Rule 10(1) of the CVR]. Commission paid to local agent of exporter is includible in the assessable value since it is not buying commission.
 - (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Rule 10(2) of the CVR].
 - (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Rule 10(2) of the CVR].
- 22.** The value of the imported goods is determined under rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as Import Valuation Rules) if the same cannot be determined under the earlier rules. However, the order of application of rules 7 and 8 can be reversed at the request of the importer and with the approval of the proper officer.

Thus, request of Mr. X for determination of value under rule 8 is legally acceptable, if the same is also approved by the proper officer.

Assuming that the request of Mr. X has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

- (a) the cost of materials and fabrication or other processing;
- (b) an amount for profit and general expenses
- (c) the cost or value of all other expenses under rule 10(2) of the said rules.

Computation of assessable value

Particulars	Amount (\$)
Cost of materials	2,000
<i>Add:</i> Fabrication charges	1,000
Other chargeable expenses	400
Other indirect costs	<u>250</u>

Cost of the goods at Mr. Q's factory	3,650
<i>Add:</i> Net profit margin @ 20% of FOB, i.e. 25% of total cost Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = \$ 4,000 [\$ 3,650 + \$ 250 + \$ 100] FOB value = Total cost till port + profit = \$ 5,000 (\$ 4,000 + \$ 1,000)	1,000
<i>Add:</i> Freight & loading/unloading charges [In case of import by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are restricted to 20% of FOB value]	1,000
Insurance charges	<u>50</u>
Assessable value	5,700
Assessable value in Indian Rupees (Exchange rate - ₹ 70 per \$)	3,99,000



TEST YOUR KNOWLEDGE

Note: The rates of duties, wherever mentioned in the illustrations/questions/examples may not always be the actual rate prevalent during the period in question. They may be hypothetical rates assumed to explain the provisions of law with more clarity.

1. 'Queen Marry', is a vessel containing the goods imported by XML Ltd. The events relating to its entry into India and the discharge and onward movement and storage of the goods are as follows.

24th May Vessel entered the Indian territorial waters.

25th May Import manifest was delivered to the customs authorities

27th May XML Ltd filed bill of entry for the goods

29th May Entry inwards granted to the vessel

The rate of customs duty on the goods was increased from 8% to 10% on 28th May.

At what rate should XML Ltd. pay the customs duty on the goods imported by it?

2. Write a brief note on self-assessment in customs under the Customs Act, 1962.
3. State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.
4. What is meant by 'boat notes'?
5. Discuss the provisions regarding transit of goods and transhipment of goods without payment of duty under the Customs Act.
6. Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.
7. What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported/exported by post?
8. Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

9. *Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.*
10. *Which class of importers is required to pay customs duty electronically? Name the dedicated payment gateway set up by the Board (CBIC) to use e-payment facility easily by an importer.*
11. *Mr. Anil and his wife (non-tourist Indian passengers) are returning from Dubai to India after staying there for a period of two years. They wish to bring gold jewellery purchased from Dubai. Please enumerate provisions of customs laws for jewellery allowance in their case.*
12. *Can the customs audit cover a person who is not an exporter or importer?*
13. *A fishing trawler is operating 10 nautical miles from the baseline. Is it entitled to duty-free stores?*
14. *What are the circumstances under which assessment is done provisionally under section 18?*
15. *State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.*
16. *Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.*
17. *Write short notes on:*
 - (a) *Export general manifest*
 - (b) *Boat note (or restriction on goods being water borne)*
18. *Discuss briefly:*
 - (a) *Temporary detention of baggage*
 - (b) *Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post*
19. *What is the permissible time limit with respect to the following- :*
 - (i) *for filing a bill of entry*
 - (ii) *for paying the assessed duty*

- (iii) *for delivery of arrival manifest or import manifest/report and departure manifest or export manifest/report*
20. *State in brief the provisions of the Customs Act, 1962 relating to filing of "Arrival manifest or import manifest/ Report".*
21. *Write a brief note on the declaration made by the owner of baggage.*
22. *State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.*
23. *Under what situations the amount of duty and interest refundable under section 18 of the Customs Act, 1962 shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund?*
24. *State the procedure for clearance of goods imported by post.*
25. *Briefly explain the following with reference to the provisions of the Customs Act, 1962:*
- (i) *Bill of export*
 - (ii) *Import report*
 - (iii) *Imported goods*
 - (iv) *Entry*
 - (v) *Prohibited goods*
 - (vi) *Customs port*
 - (vii) *Goods*
 - (viii) *Stores*
 - (ix) *Conveyance*
 - (x) *Dutiable goods*
 - (xi) *Customs area*
 - (xii) *Adjudicating Authority*
 - (xiii) *Foreign going vessel or aircraft*
 - (xiv) *Assessment*

26. With reference to the facility, 'Clear first-Pay later' extended to importers under the customs law, answer the following questions:
- (i) What is the objective of the facility?
 - (ii) Who is eligible to avail this scheme?
 - (iii) What are the due dates for payment of duty under this facility?
 - (iv) What are the circumstances when the deferred payment facility will not be available?
27. Gregory Peg of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following:

Particulars	Value in ₹
Travel Souvenir	85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of ₹100 each	12,000
Fire arm with 100 cartridges (value includes the value of cartridges at @ ₹ 500 per cartridge).	1,00,000

Determine customs duty payable, if the effective rate of customs duty is 38.50% inclusive of social welfare surcharge, with short explanations where required. Ignore Agriculture infrastructure and development cess.

28. An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 for late filing of the bill of entry. Since, importer wanted to clear the goods urgently, he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Can bill of entry be filed in advance? Examine the issue regarding period available for filing bill of entry in the light of relevant statutory provisions?
29. Laxmi Company imported goods valued at ₹ 10,00,000 vide a Bill of Entry presented before the proper officer on 15th December, 2022, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical or other test and therefore, the same were provisionally assessed at a value of ₹ 10,00,000 and Laxmi company paid provisional duty of

₹ 2,00,000 on the same date. Laxmi Company wants to voluntarily pay duty of ₹ 1,50,000 on 20th January, 2023.

- (1) Can Laxmi Company provisionally pay the duty and what are the conditions which are to be complied before such payment is made?
 - (2) Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of ₹ 1,50,000 as stated above is made on 20th January, 2023 and that the final duty is assessed on 31st January, 2023 at ₹ 4,00,000 and the balance duty is paid on the same day.
30. After visiting USA for a month, Mrs. and Mr. Iyer (Indian residents aged 35 and 40 years respectively) brought to India a laptop computer valued at ₹ 70,000, used personal effects valued ₹ 1,40,000 and a personal computer for ₹ 58,000.

Calculate the custom duty payable by Mrs. & Mr. Iyer, if any. Ignore Agriculture infrastructure and development cess.

31. Mrs. X, an Indian resident (36 years old) who was on a visit to China, returned after 6 months. She was carrying with her the following items:

(i)	Personal effects	₹ 75,000
(ii)	Laptop computer	₹ 60,000
(iii)	Jewellery - 25 grams (purchased in China)	₹ 75,000
(iv)	Music system	₹ 50,000

Compute the customs duty payable by Mrs. X with reference to the Baggage Rules, 2016. Ignore Agriculture infrastructure and development cess.



ANSWERS/HINTS

1. Rate of duty will be 10%, because the bill of entry is deemed to have been filed on the date of entry inward though it was actually filed before the rate of duty increased.
2. Refer section 17.

3. Interest is payable from the first day of the month in which the provisional assessment began. Refer section 18.
4. Boat notes are issued to cover transport of cargo to or from vessels that cannot come into the port. Refer 'Restrictions on goods being water-borne'. (section 35)
5. Refer sections 53 and 54.
6. Refer section 79 and Baggage Rules.
7. Refer Section 83.
8. Vessel / aircraft must call or land only at a notified customs port or airport, unless otherwise permitted, and except in an emergency. Refer section 29 of the Customs Act.
9. Entry inwards is permission to begin unloading of the imported goods, and entry outwards is permission to begin loading of export goods. Refer section 31 and section 39.
10. Authorised economic operators and those importers who are paying ₹ 10,000 or more per bill of entry. They will pay through ICEGATE. Refer para "Mandatory E-payment of duty".
11. As per rule 5 of the Baggage Rules, 2016, a passenger who has been residing abroad for more than one year and returns to India shall be allowed duty free clearance of jewellery in *bona fide* baggage as under:
 - Jewellery upto a weight of 20 grams with a value cap of ₹ 50,000 for a gentlemen passenger
 - Jewellery upto a weight of 40 grams with a value cap of ₹ 1,00,000 for a lady passenger

Thus, in the given case, Mr. Anil would be allowed duty free jewellery upto a weight of 20 grams with a value cap of ₹ 50,000 and his wife would be allowed duty free jewellery upto a weight of 40 grams with a value cap of ₹1,00,000.

Further, in addition to the jewellery allowance, Mr. Anil and his wife would also be allowed duty free clearance of jewellery worth ₹ 1,00,000 (₹ 50,000 per person) as part of free baggage allowance.
12. Yes, persons dealing with the goods can also be audited. Refer section 99A and related regulations.

13. No. Refer definitions of Foreign going vessel and 'India'.
14. Refer provisional assessment of duty under para 5.
15. Refer transit and transshipment of goods under para 11.
16. Refer section 48: The goods can be auctioned.
17. (a) EGM: Refer section 41;(b) boat note: Refer section 35
18. (a) Refer section 80 (b) Refer section 83
19. (i) Refer section 46: 30 days prior to arrival, & not later than the end of the day of arrival.
(ii) Refer section 47: day of filing bill of entry (self-assessment) or within a day of receiving re-assessed bill of entry.
(iii) Refer section 30: import manifest: before arrival; import report: within 12 hours of arrival of conveyance at customs station; section 41: departure or export manifest / report: before departure of conveyance.
20. Refer section 30
21. Refer section 77 read with Baggage Declaration Regulations 2013
22. Refer section 46
23. Refer section 18
24. Refer section 84
25. Refer para 3
- 26 (i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for delinking duty payment and customs clearance. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing.
(ii) Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).

As a part of the ease of doing business focus of the Government of India, the CBIC has rolled out the AEO (Authorized Economic Operator) programme.

It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBIC.

(iii) The due dates for payment of deferred duty are -

S. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

(iv) If there is default in payment of duty by due date more than once in three consecutive months, the facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

27. As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of

- (i) travel souvenirs; and
- (ii) Articles up to the value of ₹ 15,000 (excluding *inter alia* fire arms, cartridges of fire arms exceeding 50 and cigarettes exceeding 100 sticks), if carried on in person.

Computation of customs duty payable	₹
Travel souvenir	Nil
Articles carried on in person	1,50,000
Cigarettes [100 sticks can be accommodated in General Free Allowance (GFA)]	10,000
Fire arms cartridge (50 cartridges can be accommodated in GFA)	<u>25,000</u>
Baggage than can be accommodated in GFA	1,85,000
Less: GFA	<u>15,000</u>
Baggage on which duty is payable	<u>1,70,000</u>
Duty payable @ 38.50% (including 10% Social welfare surcharge)	<u>65,450</u>

Note: Fire arms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [Notification No. 26/2016 Cus. dated 31.03.2016]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

- 28.** Yes, charges are payable for late filing of bill of entry if an importer fails to present the bill of entry before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing, and the proper officer is satisfied that there was no sufficient cause for such delay [Section 46(3) of the Customs Act, 1962]. However, the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

- 29. (1)** Provisional assessment of duty is permitted in case where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test [Section 18 of the Customs Act, 1962]. Thus, Laxmi Company can pay the duty on provisional basis.

Before, the provisional assessment of duty, the importer must furnish such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed/re-assessed and the duty provisionally assessed.

- (2)** Section 18 of the Customs Act, 1962 further stipulates that the importer is liable to pay interest, on any amount payable consequent to the final assessment order @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Accordingly, amount of interest payable will be

$$\begin{aligned} &= [\text{₹ } 1,50,000 \times 15\% \times 51/365] + [\text{₹ } 50,000 \times 15\% \times 62/365] \\ &= \text{₹ } 3,144 + \text{₹ } 1,274 = \text{₹ } 4,418 \end{aligned}$$

- 30. (1)** As per the Baggage Rules, 2016, an Indian resident arriving from a country other than Nepal, Bhutan, or Myanmar, is allowed duty free clearance of-

- (i) Used personal effects and travel souvenirs without any value limit.
- (ii) Articles [other than certain specified articles] up to a value of ₹ 50,000 carried as accompanied baggage [General duty free baggage allowance].
- (iii) Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

- (2)** One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from

whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].

- (3) (i) Accordingly, there will be no customs duty on used personal effects (worth ₹ 1,40,000) of Mrs. and Mr. Iyer and laptop computer brought by them will be exempt from duty.
- (ii) Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹58,000 – ₹ 50,000 = ₹ 8,000.
- (iii) Effective rate of duty for baggage = 38.50% [including Social Welfare Surcharge]
- (iv) Therefore, total customs duty = ₹ 3,080.

31. Computation of customs duty payable by Mrs. X

Particulars	₹
Personal effects [Duty free clearance is allowed]	Nil
Laptop computer [One laptop computer is exempt when imported into India by a passenger ≥ 18 years of age]	Nil
Jewellery [Duty free jewellery allowance is not available to Mrs. X since she did not reside abroad for more than 1 year]	75,000
Music system	<u>50,000</u>
Total value	1,25,000
Less: General duty free baggage allowance of ₹ 50,000	<u>50,000</u>
Value of baggage liable to customs duty	75,000
Rate of Duty	38.50%
Customs duty @ 38.50% (including social welfare surcharge)	28,875



TEST YOUR KNOWLEDGE

1. Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods commences from the date on which an into-bond bill of entry in respect of such goods is presented. Comment on the validity of the statement.
2. "If manufacturing operations are carried out on warehoused goods and finished products are cleared for home consumption, then appropriate duty of customs should be levied on the quantity of the warehoused goods contained in the waste or refuse arising out of such manufacturing process."

Examine the validity of the said statement in the context of section 65 of the Customs Act, 1962 dealing with manufacture and other operations in relation to warehoused goods.

3. Enumerate the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.
4. Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

Particulars	14 th May	21 st September	14 th October
Rate of exchange per US \$ (as notified by Central Board of Indirect taxes & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

5. *BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.*

On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case(s), if any.



ANSWERS/HINTS

1. Invalid. As per section 61, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In other words, the relevant date for determining the commencement of the period of 90 days is the date of order made under section 60 permitting removal of goods from the customs station for deposit in a warehouse, and not the date on which into-bond bill of entry in respect of such goods is presented.

2. **The said statement is valid.**

Section 65 lays down that if the finished products arising as a result of operations carried out in the warehouse are cleared for home consumption, import duty would be charged on the quantity of the warehoused goods contained in the waste or refuse arising from such operations.

3. Section 72 provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse–
- where any warehoused goods are removed from a warehouse in contravention of section 71 of the Customs Act;
 - where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
 - where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.

4. **Computation of import duty payable by Vipul**

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Social welfare surcharge @ 10% on ₹ 6,52,000	<u>65,200</u>
Total customs duty payable	<u>7,17,200</u>

Notes:

- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [*Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)*]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61 of the Customs Act, 1962, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Period of 90 days commencing from the date of order made under 60 expires on	19 th August
No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]	56 days
Interest payable = ₹ 7,17,200 × $\frac{15}{100}$ × $\frac{56}{365}$ (rounded off)	₹ 16,505

5. Yes, the company will succeed. The facts of the given situation are similar to the case of *CCus vs. Biocco Lawrie Ltd. 2008 (223) ELT 3 (SC)* wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.

Section 49 of the Customs Act, 1962 *inter alia* also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer and if the same cannot be cleared within a reasonable time, shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

Meaning of relevant date

S.No.	Case	Relevant date
1.	Goods exported out of India	Date on which proper officer makes an order for exportation under section 51
2.	Relinquishment of title to goods	Date of such relinquishment
3.	Goods being destroyed or rendered commercially valueless	Date of such destruction/rendering of goods commercially valueless



TEST YOUR KNOWLEDGE

1. Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.
2. *M/s HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.*

M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?

3. *XYZ Ltd imported capital goods and used them in its factory to produce goods for sale. Upon discovery of an error by which excess import duty had been paid on the said capital goods, it filed a claim for refund. As regards unjust enrichment, it contended -*

- that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and
- that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.

Examine the merits of these contentions, with the support of case law, if any.

4. *Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.*
5. *What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?*
6. *Explain the doctrine of unjust enrichment with respect to refund of duty.*
7. *Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay ₹ 12 lakh, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of ₹ 8 lakh on the ground that the differential amount should be ₹ 4 lakh only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.*
8. *Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at ₹ 1,150 per unit. The customs duty on this article has been assessed ₹ 250 per unit. He adds his profit margin ₹ 350 per unit and sells the article for ₹ 1,750 per unit.*

After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for ₹ 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

9. Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:
- (i) goods exported out of India
 - (ii) relinquishment of title to goods
 - (iii) goods destroyed or rendered valueless.
10. Explain whether refund of import duty is allowed in case of perishable goods?
11. Briefly explain whether interest is paid to the applicant in case of delayed refund by Customs Authorities? If yes, also explain the period for computation of interest?



ANSWERS/HINTS

1. According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:
- (a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.
 - (b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.
 - (c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.
 - (d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.
 - (e) Where the refund arises as a result of any judgement/ decree/ order/ direction of the Appellate Authority/ Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/decree/order/direction.

The time limit of one year is not applicable if duty is paid under protest. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

2. Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

3. The incidence of duty can be passed directly or indirectly. Where the capital goods are used for manufacture, the duty paid on their import will go into the costing of the goods manufactured and sold, and can thus be passed on to the buyers. The Large Bench of the Tribunal in the case of *SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB)* has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. As regards the relevance of the fact that price remained the same before and after the capital goods were imported, the Larger Bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons. In view of this, the contentions of XYZ Ltd are liable to be rejected.
4. Often, goods imported are found to be defective or not according to specifications. In such cases, earlier, the refund of customs duty paid at the time of import could be obtained only if the imported goods were physically returned to foreign supplier. Generally, cost of return of the rejected goods is heavy and it is economical to dispose of the goods in India itself. Realising this practical difficulty, section 26A of Customs Act makes provision for refund of import duty paid if goods are found defective or not as per specifications.

The refund is admissible if goods are re-exported or relinquished and abandoned to the customs authorities or destroyed. Thus, refund is possible even if goods are destroyed or relinquished in India without re-exporting the same.

The section stipulates the following conditions for the refund:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
 - (ii) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
 - (iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;
 - (iv) the importer does not claim drawback under any other provision of this Act; and
 - (v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.
 - (vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.
 - (vii) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.
 - (viii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.
5. As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is ₹ 100.

6. Customs duty is a levy under Indirect taxation, which implies that the incidence of the customs duty paid is generally passed on to the buyer of the goods.

When an importer imports goods, he has to pay the customs duty on such goods. Similarly, an exporter in case of export goods, if the same are subject to export duty, the exporter pays the export duty. This duty is recovered from the buyer when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the buyer, from whom the importer or exporter collects the customs duty paid. Subsequently, if the importer or exporter makes a claim for refund of duty paid (due to excess payment) and receives the refund from the Government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the Government. Such enrichment is referred to as 'unjust enrichment'.

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess payment of duty, the refund is to be given only to the person who has borne the burden of such duty along with interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'.

Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

7. Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of ₹ 12 lakh. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)*, that such

a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

8. Mr. N's invoices show that he collected duty of ₹ 250 per unit on 1,000 items. However, he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr. N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr. N's invoices will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.
9. The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	Relevant date
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless

10. Refund is not allowed in case of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period in terms of section 26A(3) of the Customs Act, 1962.

However, the Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed under section 26A(4) of the Customs Act, 1962

11. Yes, interest is to be paid to the applicant in case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund. The government is permitted to fix such interest between 5% and 30%.

Currently, the rate of interest is 6% vide *Notification No. 75/2003-Cus (NT) dated 12.09.2003*.

The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.